

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 591.

THE UNITED STATES, APPELLANT,

VS.

EARL B. COE.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## UNITED STATES OF AMERICA.

*The President of the United States to Earl B. Coe, greeting :*

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington on the 2nd day of October, 1893, pursuant to an appeal filed in the office of the clerk of the court of private land claims at Santa Fe, wherein the United States is appellant and you are the respondent, to show cause, if any there be, why the judgment rendered against the appellant, the United States, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable chief justice of the court of private land claims, this 21 day of August, in the year of our Lord one thousand eight hundred and ninety-three.

JOSEPH R. REED,  
*Chief Justice.*

DENVER, COLO., August 29, 1893.

Served by delivering to Earl B. Coe a true copy at Denver this 29 day of August, 1893.

A. H. JONES, *Marshal,*  
By A. W. BROWN, *Deputy.*

Marshal's fees :

One service .....	\$2.00
1 mile .....	.06
	<hr/>
	2.06

## UNITED STATES OF AMERICA.

In the court of private land claims, Santa Fe, New Mexico.

EARL B. COE, PLAINTIFF, RESPONDENT,

*vs.*

THE UNITED STATES, DEFENDANT, REPELLANT.

} No. 49.

*Appeal and allowance.*

The above-named defendant, the United States, considering itself aggrieved by the judgement entered against it on the 24th day of February, 1893, in the above-entitled proceeding, doth hereby appeal from said judgment to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said judgement was made, and duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,  
*U. S. Attorney, Court of Private Land Claims.*

And now, to wit: On the 21 day of August, 1893, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,  
*Chief Justice Court of Private Land Claims.*

c UNITED STATES OF AMERICA, ss:

In the court of private land claims, Santa Fe, June 20, 1893.

EARL B. COE, PLAINTIFF,  
vs.  
THE UNITED STATES, DEFENDANT. } No. 47.

*Stipulation.*

It is hereby stipulated and agreed between the plaintiff and the defendant that in making up the transcript in this case for the Supreme Court the clerk shall copy only the translations of the original Spanish documents in the same, and that all original Spanish documents and all original exhibits used by either the plaintiff or defendant in the trial of the cause are to be transmitted by him to the clerk of the Supreme Court of the United States for the use of either party and the court upon the hearing of this case therein.

A. M. STEVENSON,  
S. L. CARPENTER,  
*Attorney for Plaintiff.*

MATT. G. REYNOLDS,  
*U. S. Attorney, for Defendant.*

d (Copy.)

AUGUST, 21, 1893.

*To the Hon. Clerk of the Supreme Court of the United States, Washington, D. C.:*

SIR: In obedience to a stipulation, a copy of which is attached hereto, in the case of Earl B. Coe vs. The United States, No. 47, which has been appealed to the Supreme Court by the defendant, the United States, I send to you, under separate cover, the following documents, all in the Spanish language, to wit:

Testimonio, or title papers (Exhibit B to plaintiff's petition), but introduced in evidence as petitioner's Exhibit A.

Certificate signed by Juan Encinas, alcalde—petitioner's Exhibit B.

Certificate signed by Jose Maria Mendoza—petitioner's Exhibit C.

Certificate of Jose Maria Mendoza—petitioner's Exhibit D.

Certificate signed by Jose Maria Mendoza and Florencie Trejo—petitioner's Exhibit E.

Certificate signed by Jose de Aguilar—petitioner's Exhibit F.

Review or list of titles in archives of Sonora—portion of, introduced as petitioner's Exhibit A 1.

e I also send you, under separate cover, the following photographic exhibits, as stated on pages 316 and 349 of the transcript made in this cause, to wit:

Photographic exhibits for petitioner, thirty of cabinet size, each being identified on the back and in the transcript alphabetically; that is to say, from A to Z, inclusive, and from A 1 to D 1, inclusive, also G 1; and two very large photographs identified as E 1 and F 1, and

Photographic exhibits for United States, the defendant, being twenty-three photographs on like number of pages of a book, endorsed "El Paso

de los Algodones Grant, photographic Exhibit 1 to 23, inclusive, on part of the United States."

Please sign and return the enclosed receipt and oblige,

Yours, very truly,

JAMES H. REEDER,

*Clerk Court of Private Land Claims.*

1 UNITED STATES OF AMERICA,  
*Territory of New Mexico, ss:*

Be it remembered that heretofore, to wit, on the second (2) day of February, A. D. 1892, the Algodones Land Company, by its attorneys, E. M. Sanford, esquire, and Coe & Carpenter, filed in the office of the clerk of the court of private land claims, in and for the State of Colorado, at the city of Denver, in said State, a petition, in which said Algodones Land Company is plaintiff and the United States of America is defendant; which said petition is in the words and figures following, to wit:

In the United States court of private land claims.

In the matter of the Algodones Land Company for the confirmation of its title.

*Petition.*

Your petitioner, the Algodones Land Company, respectfully shows and alleges that it is a corporation duly erected and organized under and by virtue of the laws of the Territory of Arizona.

Your petitioner further alleges that it owns, holds, and possesses that certain tract of land commonly known and designated as the Rancho El Paso de los Algodones, lying and being situate in the southwest corner of the Territory of Arizona and more particularly herein-  
2 after described.

Your petitioner further represents that it owns, holds, and possesses said land under and by virtue of a certain instrument of writing, now and hereinafter designated as a grant title, bearing date the 12th day of April, 1838, duly made and executed by and on behalf of the State of Sonora, in the Republic of Mexico, under and by virtue of article two (2) of the sovereign decree, number seventy (70) of the 4th of August, 1824, therein conceding to the State the revenues (rentals) which by said law are not reserved to the General Government, one of which is the vacant land in the respective districts pertaining to the same; and thereunder the honorable constituent congress of Sonora and Sinaloa passed a law, being a law numbered thirty (30), bearing date 20th of May, 1825; and whereunder there was subsequent legislation passing other decrees, considering the same matter, and being embodied in sections 3, 4, 5, 6, and 7 of chapter 90 of the organic law of the treasury, being law numbered twenty-six (26) of the second of July, 1834.

That under and by virtue of said laws and decrees such proceedings were thereunder regularly and lawfully had as that the government of the State of Sonora, by its officers duly authorized by the laws aforesaid, and of said State, duly and regularly and for a good and valuable con-

3 sideration, to wit, the sum of four hundred dollars (\$400, in the lawful money of the State, and for other good and valuable considerations in said grant title set forth and described, did on the 12th day of April, 1838, sell and convey to one Senor Don Fernando Rodriguez, the land hereinbefore mentioned, and more particularly herein-after described.

Your petitioner further represents that it brings here a map of the land contained within the exterior boundaries of said grant, and attaches the same hereto and makes said map Exhibit A, and the same is made a part of this petition.

Your petitioner further represents that the original grant title or instrument of writing by which said grant was conveyed by the said State of Sonora to Senor Don Fernando Rodrigues, is not in the possession or under the control of your petitioner, but the said instrument or grant title is now, together with other alleged records and papers in the possession and custody of Royal A. Johnson, as surveyor-general of the Territory of Arizona, at the city of Tucson, and therefore your petitioner represents that *that* the original documents conceding or according said grant, together with transcripts or copies thereof, cannot be herewith presented or delivered to the United States attorney of this court for his judicial use. That the plaintiff has in its possession and under its control a certain copy of said grant title, which is endorsed by said surveyor-general as a true copy of the paper on file in the office of the surveyor-general for the district of Arizona, and purporting to be a copy translated

4 into the English language of the said grant title, which copy so certified as aforesaid is hereto attached and made a part of this petition and marked Exhibit B. Your petitioner represents, however, that there are many inaccuracies and omissions inadvertently made in said copy and among other things there is an omission of a map of the exterior boundaries and locations of said grant, which map or plat is attached to and is a part of the original grant title. Your petitioner further represents and shows that it cannot at this time comply with the rules of the court in furnishing copies of said grant, for the reason that said grant papers are not in its possession, but in the possession of the surveyor-general aforesaid; that on the coming on of the said original grant title, to this court by the order of this court, or otherwise as may seem proper, your petitioner will furnish the necessary and requisite copies of said instrument in the Spanish and English languages, at such time and under such terms as may be required by order of the court, or otherwise as may be proper.

Your petitioner further shows that your petitioner, the corporation aforesaid, claims to own, hold, and possess said property, under and by virtue of divers and sundry conveyances made by the said Senor Don Fernando Rodrigues, and his guarantees to the Colorado Commercial and

5 Land Company, a corporation duly erected under the laws of the State of California, and by the said California corporation, through divers other conveyances to your petitioner, which several other conveyances are on file and of record in the office of the county recorder of the county of Yuma, in the Territory of Arizona; abstracts whereof your petitioner will furnish to this court at such time and upon terms as may be meet proper in the premises.

Your petitioner further alleges that he is informed and believes that there *us* no person or persons in possession of or claim said grant, or any part thereof, otherwise than by license or permission of your petitioner or its grantors or predecessors in interest, except so much as is occupied by the village of Yuma, in the county of Yuma, Territory of Arizona, as mentioned and described in a certain town-site patent heretofore executed and delivered by the President of the United States to the mayor of the incorporation of Yuma, for the use and benefit of the occupants thereof, and on file and of record in the office of the county recorder aforesaid; that as to so much of the said grant land and no more that is mentioned and described in said town-site patent, the grantor and predecessor in the interest of your petitioner has heretofore deeded and conveyed to the mayor of said municipal corporation of Yuma all the right, title, and interest said grantor or predecessor in interest then had; and your petitioners here and now disclaims any interest in so much of said

6 grant land as lies within the exterior boundaries of said town-site patent, saving and reserving, however, if it seems meet and proper to 'his court, the right to have that portion of said grant as lies within the exterior boundaries of the land described in said town-site patent, confirmed to inure to the benefit of the mayor of said village of Yuma and his successors in office, for the benefit of the occupants of said town site.

Your petitioner further represents that under and by virtue of section eight (8) of the act of Congress approved July 22nd, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donation to actual settlers therein, and for other purposes," and of acts amendatory or in extension thereof, or supplemental thereto; a grantor and predecessor in interest of your petitioner, to wit, the Colorado Commercial and Land Company, filed in the office of the surveyor-general of the district of Arizona, on the 22nd day of December, 1879, a petition, therein praying that the said grant title may be confirmed, and thereunder such proceedings were had as that *ex parte* testimony was taken on behalf of the Government, without the opportunity on the part of the then grant claimants to confront the witnesses or to examine or cross-examine any witness or any evidence produced on the part of the Government. That afterwards such proceedings were had by the said

7 surveyor-general on the 13th day of August, 1880, as that he recommended in substance and to the effect that the said grant claim and title be not confirmed, but that the same be rejected, and thereafter, as your petitioner is informed and believes, no further nor other proceedings were had or taken thereunder.

Your petitioner further represents and shows that the land described and intended to be described by and in said grant title, and conveyed as aforesaid by the State of Sonora to the said Don Fernando Rodrigues, and owned, held, and possessed by your petitioner as aforesaid, is as follows, to wit:

"Five (5) square leagues of land, contiguous to the Colorado River, situated in front of the confluence of the same with the Gila River, and opposite a point named El Paso de los Algodones, and known as the Rancho El Paso de los Algodones grant, and more particularly described, omitting the land described in the town-site patent aforesaid, as follows, to wit:

Section' one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-



four (24), twenty-three (23), twenty-six (26), thirty-five (35), thirty-four (34), in township number ten (10) south, range twenty-five (25) west of the Gila and Salt River base and meridian; also sections four (4), five (5), six (6), seven (7), eight (8), seventeen (17), eighteen (18), and nineteen (19), the northwest quarter ( $\frac{1}{4}$ ) of section three (3), the north half ( $\frac{1}{2}$ ) and southwest quarter ( $\frac{1}{4}$ ) of section nine (9), the west one-half ( $\frac{1}{2}$ ) of section twenty (20), the north one-half ( $\frac{1}{2}$ ) and southwest quarter ( $\frac{1}{4}$ ) of section thirty (30), and northwest one-quarter ( $\frac{1}{4}$ ) of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one-quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north one-half ( $\frac{1}{2}$ ) and the southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section five (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also section six (6), and the northwest quarter of section five (5), and the north one-half ( $\frac{1}{2}$ ) and the southwest one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian. Section' nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and of the northwest quarter ( $\frac{1}{4}$ ) and southwest quarter ( $\frac{1}{4}$ ) of twenty-eight (28) in township (8) south, range twenty-three (23) west, Gila and Salt River base meridian; also section' twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33) in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian; also that certain tract of land lying north of the San Bernardino base and meridian, and west of the village of Yuma, and within the said county of Yuma.

Also commencing at the southeast corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west; thence ranging south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along a westerly prolongation of the south line of said section to the southeast corner of said section and place of beginning.

And intended to cover and describe all tracts of land not hereinbefore specifically mentioned as lying along and upon the left bank of the Colorado River between the boundary line of the United States and the Republic of Mexico, and the confluence of the Gila and Colorado rivers, and conveyed by said grant title containing five (5) square leagues of land.

Wherefore your petitioner prays for an interlocutory order directing and commanding Royal A. Johnson, as surveyor-general of the district of Arizona, and his successors in office, to safely transmit the said original title, together with all records and papers in his possession as such officer relating to the Rancho El Paso de los Algodones

grant, to this court with all convenient speed; and that a hearing of this cause may be had, and that the validity of the title of your petitioner to said grant may be inquired into and decided; together with such other and further action of relief of this court as to the court may seem meet and proper in the premises.

E. M. SANFORD,  
COE & CARPENTER,  
*Attorneys for Petitioner, 615 E. & C. B'ld'g, Denver."*

(Which said petition bears the following endorsements, to wit: "In the U. S. court private land claims, State of Colorado. In Re. Algodones Land Co. for confirmation of grant. Petition. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92, at Santa Fe. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. E. M. Sanford, Coe & Carpenter, att'ys, 615 E. & C. Block, Denver.")

11 Attached to and made a part of said petition is a map of the land as claimed, which said map is attached hereto and made a part of this transcript.

(Map—Exhibit A.)

12 Attached to and made a part of said petition is Exhibit "B," which is a translation of said grant title, and is in the words and figures following, to wit:

#### EXHIBIT B.

Translation of title of grant of five square leagues of land, more or less, known as the Rancho El Paso de los Algodones, situated at the confluence of the rivers Gila and Colorado, in Arizona Territory; granted to Senor Don Fernando Rodriguez, April 12th, 1838; now owned by the Colorado Commercial and Land Company. San Francisco, Frank Eastman & Co., printers, 509 Clay street, 1879.

13 Title of grant of five square leagues of land situated contiguous to the rivers Gila and Colorado, in front of the junction of the same; also the place (punto) named "El Paso de los Algodones," of the said river Colorado, on the frontier of the north of this State of Senora, issued by the said office of the general treasury, in favor of the Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, Free State of Sonora.

Second-class seal, twelve reales (\$1.50) for the years one thousand eight hundred and thirty-seven, and thousand eight hundred and thirty-eight.

Jose Justo Milla, proprietary auditor of the general treasury of the free, independent and sovereign State of Sonora, encharged with the said office by the laws:

Whereas Article II of the sovereign general decree, No. 70, of the fourth of August, 1824, conceded to the States the revenues (rentas) which by said law are not reserved to the general government, one of which is

the vacant land in the respective districts pertaining to the same, in consequence of which the honorable constituent congress of Sonora and Sinaloa passed the law, No. 30, of the twentieth of May, 1825, and also subsequent legislations passed other decrees concerning the same matter, which dispositions have been embodied in sections three, 4, 5, 6, and 7 of chapter 90 of the organic law of the treasury, No. 26, of the 11 of July, 1834.

14 And Don Fernando Rodriguez, a resident of Hermosillo, having made formal application to this general treasury department for the registry of certain vacant and desert lands contiguous to the Gila and Colorado rivers, in the northern part of the State, the corresponding espediente was made out, in strict accordance with the laws, which is as follows:

*Senor Treasurer-General of the State:*

I, Fernando Rodriguez, a resident of Hermosillo, before your honor, in due form of law, represent: That having sufficient means to settle and cultivate a tract of vacant land, which is entirely desert, on the northern frontier of the State, situated between the Colorado and Gila rivers, said lands including the tract from the southern side of the Gila River, in front of the junction of the same with the Colorado River, as far as the crossing (Paso) of the Algodones, and from said point following the eastern margin of the Colorado River as far as the junction of the same with the Gila, a distance of about five leagues.

Wherefore, in the name of the sovereign authority of the State, I make a formal registry of said vacant lands, which your honor will be pleased to admit, and to appoint a person worthy of confidence, for the purpose of making the corresponding measurements and valuation of said lands, and to make the necessary publications as required by law; I, offering at the proper time, to furnish satisfactory evidence as to my capabilities,

15 and to pay the just taxes (derechos) into the public treasury; it being understood, Senor Treasurer, that the registry that I now make is under the condition that the settlement and occupation of the said vacant lands by me shall be when the notorious condition and circumstances of the region of country in which said vacant lands are situated may permit the same to be done, since the said vacant lands are situated in a country desert and uninhabitable, on account of the hostility of savages; it being well known that a settlement made by the Spanish Government in the desert country of the Colorado was entirely destroyed in a short time by the Yuma Indians and other savages.

Wherefore I pray your honor to be pleased to decree as I have asked, swearing that I ask this in good faith and to whatever is necessary.

FERNANDO RODRIGUEZ.

HERMOSILLO, *January 4th, 1838.*

ARIZPE, *January 12th, 1838.*

The foregoing petition being presented and admitted, and since the petitioner offers to present the necessary evidence of his capabilities, and besides, since it is well known that the petitioner (registrador), Don Fernando Rodriguez, is a man of abundant means, and ample commission is conferred on Don Macericio Carillo, a resident of the capital, to the end that without

prejudice to a third party who may have a better right (which includes those  
 16 who may have heretofore have registered or denounced the same  
 land, with the same, or under a different name, situation, and  
 boundaries), and with previous citations to the interested party and  
 coindantes, if there should be any, that they appear in person, or by their  
 agents, to designate and defend their boundaries, and that the said com-  
 missioner shall proceed to the measurement, valuation, and offer of sale of  
 the said vacant lands referred to in the foregoing registry; said commis-  
 sioner proceeding in the matter in entire conformity with the provisions of  
 sections 3, 4, 5, 6, and 7 of chapter 90 of law No. 26, of the 11th of  
 July, 1834, and also with the regulations for the measurements of lands  
 for the raising of cattle and horses, which regulations were formed in ful-  
 fillment of the requirements of law No. 30, of the 20th of July, 1825,  
 adjusting the citio or sitios that may result in accordance with the constant  
 practice of multiplying the number of varas contained in the diameter from  
 north to south, by the number contained in that from east to west, so as  
 to give to each sitio the area corresponding to the sum of twenty-five  
 millions of square varas, as required by the existing laws in relation to  
 the matter.

And when these proceedings shall have been concluded the same shall be  
 transmitted, in the original, to this office (Tesoreria), annexing thereto the  
 corresponding topographical map of the land; notifying the interested  
 party and others who may be interested as bidders, that personally or by  
 17 their agents they may be present at the public sale of said lands  
 which are to be made in "Junta de Almonedas" in favor of the  
 person who may be the highest bidder. Jose Justo Milla, pro-  
 prietary auditor of the general treasury of the State, and encharged with  
 the same by the laws thus provided, ordered, and signed, with the assisting  
 witnesses, in the absence of a notary public, there being none according  
 to law.

JOSE JUSTO MILLA.

Assistant: ALEJO CARRILLO.

Assistant: LEWIS CARREMEO.

ARISPE, *January 12th*, 1838.

The foregoing order of the Senor Treasurer-General having been  
 received, by which he was pleased to commissioner me to make the meas-  
 urement, valuation, and the offer of sale of the vacant lands referred to in  
 the registry of Don Fernando Rodriguez, with which this expediente com-  
 mences, and in obedience to the same, I shall proceed to said operations,  
 after the appointment, acceptance, and oaths of the official measurers,  
 counter, and marker, for which purpose I appoint for the first Don Juan  
 Rios Candelario and Jose Maria Sais; for the second, Don Julian Padillo,  
 and for the third, Don Alonzo Maria Freearra. Thus I, Mauricio Car-  
 rillo, acting commissioner, provided and signed with the assisting witnesses,  
 in the ordinary form.

MAURICIO CARILLO.

Assistant: SANTOS VIGARRIA.

Assidtant: JESUS TRASQUILLO.

Whereupon the officers appointed in the foregoing act, being present,  
 they were notified of their appointment, which they accepted and made the

18 necessary oath that they would faithfully discharge their duty. Whereupon I make this entry in the proceedings and sign the same with those who know how to write, with the officials and the ordinary assisting witnesses to which I attest.

MAURICIO CARRILLO,  
JULIAN PADILLO,  
ALONZO MARIA FREEIERRA.

Assistant: SANTOS VIGARRIA.  
Assistant: JESUS TRASQUILLA.

On the vacant lands named "El Paso de los Algodones," on the third day of the month of February, 1838, for the purpose of proceeding with all possible dispatch, on account of the great danger from the savages, with the measurement of this land, I caused the officials to measure, in my presence and that of the interested party and the assisting witnesses, a cord of ystel of 50 varas in length, which was done, the said cord having a stake attached to each end thereof of a convenient length. In view of the fact that there are no colondantes of this land, the same being in a desert region, I proceeded at once to make the corresponding measurements of the land in the following manner: Being at a point on the southern side of the river Gila, in front of the confluence of said river with the Colorado, I caused a large stone to be placed as a monument for a commencing point, and setting at this point a compass well regulated and taking a course to the southwest so as to terminate almost at the crossing of the Colorado River, named los Algodones, the line was run, measuring and counting three hundred cords, three leagues, a little more or less, allowing for the irregularities from making the measurements on horseback, the line terminating at the said paso (crossing) of the river Colorado, named los Algodones, at which point I ordered to be placed a stone monument (una abuttado mole de piedras).

19 From this point the measurements were continued along the eastern margin of the said Colorado River, running up the same (courses north-west, north, and northeast, to the point of commencement), to wit, to the first stone monument which was placed in front of the confluence of the river Gila with the Colorado. The registrador, Don Fernando Rodriguez, having asked this, and in consideration of the great danger in which he, myself, the officials, the assisting witnesses, and the escort that accompanied us of perishing at the hands of the savages, there was measured in all five square leagues, more or less, in the manner as shown by the topographical plan which accompanies these proceedings, with which the Senor Rodriguez, the interested party, was well content, who, in testimony of his being satisfied with the same, signed with me, the officials who knew how to write, and the assisting witnesses, in the ordinary form to which I attest.

MAURICIO CARRILLO.  
JULIAN PADILLO.  
FERNANDO RODRIGUEZ.  
ALONZO FREEIERRA.

Assistant: SANTOS VIGARRIA.  
Assistant: JESUS TRASQUILLO.

On the same land of the confluence of the Gila River with the Colorado, and of the Paso de los Algodones, on the fourth day of the month of February, 1838, the measurements having been concluded as set forth in the

20 foregoing proceedings, and with the approbation of the interested party, the officials and witnesses, I determined that in view of the impossibility of taking further proceedings in the matter in this dangerous desert country, and also since the officials who made the measurements have the necessary knowledge in relation to the class of these lands and the character of its permanent streams, we should proceed to the other tract of vacant land, named "La Punta del Sargento," contiguous to the Gulf of California, for the purpose of making the measurement of the same, for which purpose I am also commissioned, and which said operations shall be concluded, we shall return to the city of Arispe for the purpose of concluding the respective expedientes.

In witness whereof I sign in the ordinary form to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

In the city of Arispe, on the 18th of the month of March, 1838, for the purpose of proceeding to the justification of the aforesaid land, I appointed for the valuation of the same Don Alonzo Maria Trecierra and Juan Rios Candelario, who, after accepting the same, and made oath in due form of law, I having at the same time explained to them articles 64 and 65 of the organic law of the treasury, No. 26, of the 11th of July, 1834, they said unanimously that *that* the just value of the five square leagues referred to in these proceedings can not be less than four hundred  
21 dollars, being at the rate of eighty dollars per square league, since the same is susceptible of irrigation by the waters of the Gila River, and because the lands are suitable for cultivation, if not in the whole, still in the greater part. And having agreed as to this just price of four hundred dollars, the same being in accordance with the law on the subject, I manifested the same to the interested party, Señor Don Fernando Rodriguez, who was satisfied, saying, however, that he would desire to ask some equitable grace in this particular, in view of the fact that, one account of the danger from the savages, it will be very difficult for some years to realize the settlement and cultivation of the said lands for the just and notorious reasons set forth in his petition of registry, signing with me, the appraisers who knew how to write, and the ordinary assisting witnesses, to which I certify.

MAURICIO CARRILLO.

FERNANDO RODRIGUEZ

(for himself and for my companion).

JUAN RIOS CANDELARIO,

(who does not know how to sign).

ALONZO MARIA TRECIERRA.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

In the city of Arispe, on the said day, month, and year, the proceedings of measurement and valuation of the vacant lands referred to being concluded, I ordered that the thirty public offers of sale (pregones) be proceeded with, soliciting bidders; promulgating the same by means  
22 of an official communication to the señor judge of 1st instance of Guadalupe del Altar, to the end that he may give notice of the said public sale in the pueblos of the district.



Thus I, Mauricio Carrillo, commissioner surveyor, and ordered signing the same, with the ordinary assisting witnesses, to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARIA.

Assistant: JESUS TRASQUILLO.

Razon: At the same date an official communication was sent to the the senor judge of 1st instance of Guadalupe del Altar for the purpose set forth in the foregoing proceedings, in witness whereof I sign with my rubrica.

[RUBRICA.]

1st pregon (offer of sale). In Arispe on the ninth day of March, 1838, the first public offer at sale was made in the following legally established terms, it being announced to the public by the sound of a bell and by the autioneer (pregonero), Florencia Baldisano, in a clear and loud voice, that "there will be sold on account of the public treasury five square leagues of vacant lands, surveyed for the registrar of the same, Don Fernando Rodriguez, a resident of Hermosillo, situated contiguous to the rivers Gila and Colorado, in the northern part of this State, which lands are valued at the sum of four hundred dollars, that is, at the rate of eighty 23 dollars per square league; the same being susceptible of irrigation by permanent water, and being suitable for cultivation, if not in the whole, in the greater part; whoever may wish to bid for the same let him to so before the commissioner of surveys."

And no bidder appearing, this entry was made in the proceedings, which I sign, with the assisting witnesses, in the ordinary form, to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

2nd. On the tenth of the same month another public offer at sale was made in the same terms as the foregoing, and there was no bidder.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

3rd. On the eleventh the third offer was made, and no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

4th. On the twelfth of March the fourth offer was made, and no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

5th. On the thirteenth of said month there was made to the public the fifth offer of sale; whereupon no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.



24      6th. On the fourteenth of the same month the sixth offer was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

7th. On the fifteenth of the said mont' the seventh publication was made, and no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

8th. On the sixteenth of the same month another offer of sale was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

9th. On the seventeenth the ninth publication was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

10th. On the eighteenth another public offer was made, and no purchaser appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

11th. On the nineteenth of the same month the eleventh public offer at sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS TRASQUILLO.

Assistant: JESUS TRASQUILLO.

25      12th. On the twentieth an offer was made similar to the first, but no purchaser appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

13th. On the twenty-first of the present month a similar offer was made, but no bidder appeared.

CARRILLO.

Assistant: SANTOS TRASQUILLO.

Assistant: JESUS TRASQUILLO.

14th. On the twenty-second of March another offer was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

15th. On the twenty-third of the same month another offer was made, without any bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

16th. On the twenty-fourth another offer was made, without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

17th. On the twenty-fifth of the same month another offer was made, but there were no bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

26      18th. On the twenty-sixth another offer at public auction was made, but without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

19th. On the twenty-seventh of March another offer was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

20th. On the twenty-eighth another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

21st. On the twenty-ninth of the same month another public offer of sale was made, but without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

22nd. On the 30th of the present month the twenty-second offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

23rd. On the thirty-first of the present month of March another offer of same was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

27        24th. On the first of April another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

25th. On the second of the same month another offer was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

26th. On the third of the same month another offer was *m* made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

27th. On the 4th of the same month another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

28th. On the fifth of the same month another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

29th. On the sixth day of the same month another offer of sale was made at public auction, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

28        30th. In the city of Arispe, on the 7th day of April, 1838, the last offer of sale was made in all respects similar to the first, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

ARISPE, April 7th, 1838.

This expediente having been concluded and no purchaser appearing at the thirty offers of sale of said lands, let the expediente be transmitted to the treasurer-general of the State, that the final proceedings may be taken in relation thereto.

In witness whereof I sign with the assisting witnesses in the ordinary form.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

Razon : On the same day this expediente was by me delivered to the senior treasurer-general of the State. In witness whereof I sign with my rubrica.

Arispa, April 7th, 1838.

To the promotor-fiscal of the public treasury.

Milla,

*Señor Treasurer-General of the State :*

The undersigned, promotor-fiscal of the treasury, has carefully examined the expediente made out by the commissioner appointed by your honor, Don Mauricio Carrillo, in relation to the measurement valuation, and the public offers of sale of the vacant land registered by the Señor Don Fernando Rodriguezm, a resident of Hermosillo, which land is situated contiguous to the Gila and Colorado rivers, the measurement  
29 of which commenced in frount of the confluence of said rivers, and running from that point in a straight line to the southwest almost as far as the paso (crossing) of Los Algodones, from which point the measurement was continued all along the eastern margin of the said river Colorado, in the direction of the north, northwest, and northeast to the point where the measurements were commenced in front of the confluence of said rivers, without having summoned the colindantes, because there was none, the surveyor not having been able to make the measurement in any other manner on account of the great danger from hostile Indians, for which reason he returned at once to the city ; but all was done to the entire satisfaction of Señor Rodriguez, the erea of the land measured having been estimated at five square leagues, a little more or less, the said commissioner and officials having made the necessary observation as to the character of said vacant lands ; and after the surveyor Carrillo had made a survey of another place named Punto del Sargento, he returned here and took the necessary proceedings of valuation and offer of sale at public auction ; from which it appears that the said five square leagues were justly and legally valued at the sum of four hundred dollars—that is, at the rate of eighty dollars per square league—and that *and that* at the thirty public offers of sale no purchaser appeared. Neither does it appear that any interested party appeared from the district of Guadalupe del Alter, to which juzgado of first instance the Commissioner  
30 Don Mauricio Carrillo gave at the proper time the necessary official notice of the proceedings in relation to the sale of said vacant land.

No one can be ignorant of the fact that the registry and the survey of said land will result in a great benefit to the public treasury, and that it will promote the settlement of Sonora, and also that it is an enterprise of the Señor Don Fernando Rodriguez, which is laudable and worthy of all protection, for the notorious causes and reasons set forth by said Rodriguez in his petition for registry ; and it is also well known that these causes were the foundation of all the grants made by the Spanish Government in the desert lands of Sonora.

Wherefore, in view of these facts, it is most just that the Senor Don Fernando Rodriguez be admitted to a composition with the treasury of this sovereign State for the said vacant lands, and under the condition of settling the same when circumstances may permit the same to be done.

Wherefore the promoter fiscal asks that your honor be pleased to order that the three public offers of sale (publicos almonedes) be made, and the sale as required of said five square of land, more or less, and that when the purchase money of said land shall be paid into the treasury by the person who shall purchase the same at public auction that a title be issued to him for said lands for his security.

This is the report of the undersigned fiscal; however, your honor will determine what is proper in the premises.

JOSE CARRILLO.

ARIZPE, April 8th, 1838.

31

ARIZPE, April 8th, 1838.

In accordance with the opinion of the senior promoter fiscal of the treasury, let three public offers of sale be made of said land in the manner established by law, with notice to the interested party, Don Fernando Rodriguez.

JOSE JUSTO MILLA.

Assistant: ALEJO CARRILLO.

Assistant: LOUIS CARRANCO.

First almoneda (public auction):

In the city Arizpe, on the eighth day of April, 1838, the senores composing the junta de almonedas (board of sale) having met, these gentlemen being the senior treasurer of the State by the ministry of law; the comptroller, Don Jose Justo Milla; the judge of the first instance of this district, Don Francisco Mendosa, and the administrator of revenues of this city, Don Jose Carrillo, for the purpose of celebrating the first almoneda, referred to in this expediente, whereupon, at the sound of the bell, many individuals assembled at the office of the treasurer-general, when the auctioneer, Florencio Baldizan, said in a loud and clear voice: "There will be sold on account of the public treasury of the State, five square leagues of vacant lands, a little more or less, surveyed in favor of the register of the same, Don Fernando Rodriguez, a resident of Hermosillo, said lands being situated contiguous to the Gila and Colorado Rivers, in front of the confluence of the same, and the point of the Pass of

32 Los Algodones, on the northern frontier of this state, valued at the sum of four hundred dollars, that is, at the rate of eighty dollars per square leagues, for the reason that said land has permanent water and is suitable for cultivation. Whatever may wish to bid for said five square leagues of land let him do so before the board and he will be admitted, with the understanding that on the day after to-morrow they shall be positively knocked off to whoever may be the highest bidder for the same."

In these terms this act was concluded, and no bidder coming forward the proceedings were closed.

In witness of which the same was signed by the senior president and members of the board.

MILLA.

MENDOZA.

CARRILLO.

Second almoneda: In the same city, on the 9th of the same month and year, at the meeting of the board of sale (junta de almonedas), the second publication was made yesterday inviting bidders, with the only difference that to-morrow the sale will be made.

MILLA.  
MENDOZA.  
CARRILLO.

3rd almoneda y remate: In this city of Aripze, on the tenth day of the month of April, 1838, at a meeting of the commissioners composing the board of sale (junta de almonedas), composed of the treasurer-general of the State; the comptroller, Don Jose Justo Milla; the judge of the 1st instance of the district, Don Francisco Mendoza; and the administrator of revenues the promoter fiscal of the treasury, Don Jose Carrillo, for the purpose of proceeding to the celebration of the sale at public auction of the vacant lands referred to in this expediente. At the sound of the bell many individuals assembled at the office of the treasurer-general, and in the presence of the multitude the auctioneer, Florencio Baldizan, said, in a loud and clear voice, that "There will be sold at public auction, on account of the public treasury, five square leagues of vacant lands, surveyed in favor of the register, Don Fernando Rodriguez, a resident of Hermosillo, said tract of land being situated contiguous to the Gila and Colorado rivers, in front of the confluence of the same, and of the point of the Paso de Los Algodones, on the frontier of the north of this State, the said lands being valued at four hundred dollars, that it, at the rate of eighty dollars per square league, for the reason that the said land has permanent water, and that the same is suitable for cultivation. Whoever may desire to bid for said lands let him do before this board, and he shall be admitted."

And this offer having been made at twelve o'clock of this day, and no bidders appearing, and said Senor Don Fernando Rodriguez having repeated his offer before the board of sale (junta de almonedas) of the just price of four hundred dollars, th' auctioneer said for the last time: Once, twice, three. There will be sold to Don Fernando Rodriguez, a resident of Hermosillo, the five square leagues of arable lands, situated on the Gila and Colorado rivers, for the sum of four hundred dollars."

34 Whereupon these proceedings of sale were concluded in favor of Don Fernando Rodriguez.

In witness whereof the president and members of the board signed with the interested party.

MILLA.  
MENDOZA.  
CARRILLO.  
FERNANDO RODRIGUEZ.

ARISPE, April 10th, 1838.

Don Fernando Rodriguez, having been notified to pay in to the office of the treasury the four hundred dollars as the just price of the land referred to in this expediente, the six dollars for the last auction, and the

thirty dollars for the title to be issued to him, whereupon he said that at once he would make said payment, and in witness of which he signed with me and the assisting witnesses.

MILLA.

FERNANDO RODRIGUEZ.

Assistant: BARTOLO MIRANDA.

Assistant: ALEJO CARRILLO.

Jose Justo Milla, proprietary auditor of the general treasury of the State of Sonora, in charge of the same under the law, certifies that on folio 18 of the "Libro Manuel de Cargo y Data" of the present year is found the following entry: April 10th, charged on account of grants of lands, four hundred dollars, paid by Don Ferfardo Rodriguez, a resident of Hermosillo, as the sum which has been sold by the junto de almonedas of this treasurer's office on this day, five square leagues of vacant lands, at the rate of eighty dollars per square league, since the same

35 contains permanent water and is suitable for cultivation, the said land being situated contiguous to the Gila and Colorado rivers, in front of the confluence of the same, and also the point named El Paso de los Algodones, of the said river Colorado, on the northern frontier of this State, and of this payment the corresponding receipt was given to the interested party for his security. Milla. Fernando Rodriguez, \$400.00.

In witness whereof I give this in Arispe, on the tenth of April, 1838.

JOSE JUSTO MILLA.

Jose Justo Milla, pr'ietory auditor of the general treasury of the State of Sonora, in charge of the same by law, certifies that on folio 19 of the corresponding book of the present year there is found the following entry: April tenth, there is charged for the last offer of sale (almoneda) six dollars, paid by Don Feraando Rodriguez, a resident of Hermosillo, as the expenses or taxes of the last "almoneda or remate," made in his favor on this day, of the five square leagues of vacant lands situated on and contiguous to the Gila and Colorado rivers, in front of the confluence of the same, as also the point named "El Paso de los Algodones" of the said river Colorado, on the northern frontier of this State; and of this payment I give the interested party the corresponding certificate for his security. Milla.

FERNANDO RODRIGUEZ.

36 In witness whereof I give this in Arispe, on the tenth of April, 1838.

JOSE JUSTO MILLA.

In these terms was concluded the espediente in relation to the vacant lands situated contiguous to and in front of the cónfluence of the Gila and Colorado rivers, as also in front of the Paso de los Algodones of the said Colorado River on the northern frontier of this State, in favor of the registrar, Don Fernando Rodriguez, a resident of the city of Hermosillo, with all the formalities required by law and the supreme orders in relation thereto, the said original espediente remaining in the custody of the office of the treasury as a perpetual testimony. Wherefore, in the



exercise of the faculties conceded to me by the laws, decrees, and regulations and the superior existing orders in relation to lands, by these presents, and in the name of the free, independent, and sovereign State of Sonora, as well also of that of the august Mexican nation, I concede and confer upon, in due form of law, the Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, the five square leagues, a little more or less, which he registered, and which were sold to him at public auction by the *junto de almonedas* (board of sale) on the tenth of the present month for the sum of four hundred dollars, at which the same was valued, at the rate of eighty dollars per square league; which amount was paid into the treasury, as is shown by the respective expediente. Wherefore, I give

37 and adjudicate to the said Fernando Rodriguez, as a legal sale, for himself, his children, his heirs, and successors, the said five square leagues of vacant lands contiguous to the Gila and Colorado rivers, situated in front of the confluence of the same, as also opposite to the point named "El Paso de los Algodones" of the said Colorado River, on the northern frontier of this State, under the conditions which have been admitted as equitable and just by the interested party, the Senor Don Fernando Rodriguez, that is, that he shall settle and cultivate said lands so soon as the circumstances surrounding that distant and desert portion of the State may permit him to do so, in view of the eminent risk and danger there is on account of the savages; but when the said land shall once be settled and cultivated they shall be kept in this condition, and that they shall not be unoccupied and abandoned for any time; and if the same shall be abandoned for the space of three consecutive years, and any one else should denounce said lands, in that event, after the necessary proceedings, they shall be declared vacant and shall be adjudicated anew to the highest bidder; excepting as is just those years in which the abandonment shall be occasioned by the invasion of enemies, and this only for the time that this condition of things shall exist, requiring, as I do require, the interested party, Don Fernando Rodriguez, and his children, heirs, and successors, to the limits and coundaries which are expressly set out in the proceedings of the *measurement* as found in the expediente and in this title, observing and giving an exact fulfillment of what is

38 provided in article 63 of the organic law of the treasury, No. 26, of the 11th of July, 1834, in relation to the obligations of keeping on the boundaries of said land monuments of stone and lime. under the penalty of twenty-five dollars.

And under the authority conceded to me by the laws, and supreme orders in relation to the granting of lands, I order, command, and require all the senores, judges, justices, and local authorities, which at present exist or in future may be constituted, that in the discharge of their duty and in the carrying out of the requirements of our wise legislation, they shall not permit Don Fernando Rodriguez, nor his children, heirs, or successors to be in any manner disturbed or molested in the free use, ownership, dominion, and possession of the said five square leagues, more or less, but on the contrary they shall constantly watch and guard with the greatest vigilance and activity that he may be always protected in the quiet and peaceful possession that corresponds to him by legitimate right; so that he may freely enjoy, possess, sell, exchange, donate, transfer, leave as legacy, cede, and alienate said lands at his free will and election, as the absolute owner of the same.

In which terms the present title of ownership is issued in due form in favor of Don Fernando Rodriguez, his children, heirs, and successors, delivering the same to the said Rodriguez, for his security, first making a registry of the same in the corresponding book.

39 Given in the city of Arispe, the capital of the State of Sonora, on the 12th day of April, 1838. Authorized and signed by me, the propriatory contodor (auditor) of the general treasury of said State, and exercising the authority of the same under the law.

Sealed with the seal, which is legally used in this office, before the undersigned witnesses of assistants in the absence of a notary public, there being none, according to law.

[SEAL.]

JOSE JUSTO MILLA.

Assistant: BARTOLO MIRANDA.

Assistant: JOSE JESUS CORRUSA.

This title remains registered in the corresponding book. (Rubrica.)

Jose Justo Milla, propriatory contador of the general treasury of the State of Sonora, encharged with the same by the ministry of the law, certifies, that on folio 20 of the "Libro Manuel," of accounts of the present year, there is found the following entry: "April 12th. There is charged to the account of the grants of lands, thirty dollars paid by the Senor Don Fernando Rodriguez, a resident of Hermosillo, for the title which on this day was issued by this office of the general treasury, for five square leagues of vacaut lands, situated contiguous to the Gila and Colorado rivers, in front of the confluence of said rivers, also to the point named El Paso de Los Algodones, of the said river Colorado, on the northern frontier of this State, and of this entry a certificate is given to the interested party for his security. \$30.00."

40

MILLA.

FERNANDO RODRIGUEZ.

In witness whereof I give this, in Arispe, on the 12th day of April, 1838.

JOSE JUSTO MILLA.

*Supreme government of the free State. D. E. S. O. N. R. A.*

This supreme authority approves the title which your honor has issued on yesterday in favor of the Senor Don Fernando Rodriguez, a resident of Hermosillo, for five square leagues of land in front of the confluence of the rivers Gila and Colorado, and the Paso de los Algodones, on the northern frontier of this State. I say this to you in reply to your note of yesterday reiterating the consideration of my regard.

God and liberty.

Arispe, April 13th, 1838.

LEONARDO ESCALANTE.

To the treasurer-general of the State, Jose Maria Mendoza, provisional commissary-general of the State of Sonora, certifies that on this day he has directed, under a separate cover, and as a special matter, to his

excellency the minister of state by 'del despacho de hacienda of the Republic, and official communication of which the following is a copy :

*"General Commissary Department of the State of Sonora :*

"SIR: The Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, has presented to me the title which was issued in his favor by the general treasury of the ancient State, on the twelfth of 41 April, 1838, for five square leagues of vacant lands for cultivation, registered by the said Rodriguez, contiguous to the rivers Gila and Colorado, in front of the confluence of the same, and the point name' Paso de los Algodones, of the said river Colorado in the northern part of this State and which were for him surveyed, valued, and were sold by the Junto de Almonedas, and were adjudicated in the manner as shown by the (testimonio autorizado) certified copy, which I have the honor to transmit to your excellency to the end that the same may be presented to His Excellency the President of the Republic, for which purpose the said Senor Rodriguez has presented the said title to me of the land situated in front of the confluence of the Gila and Colorado rivers and the Paso de los Algodones of the Colorado.

"I have the honor to repeat to your excellency the consideration of my regard.

"God and liberty.

"JOSE MARIA MENDOZA.

"URES, June 6th, 1847.

"To his excellency the minister of state of del despacho de hacienda de la Republica Mexico.

"In witness whereof I give this at the request of the interested party Don Fernando Rodriguez, at Ures, the capital of the State of Sonora, on the sixth of June, 1847.

"JOSE MARIA MENDOZA."

The licenciado, Jose de Aguiar, governor of the State of Sonora, certifies in due for' of law that the present title which includes five 42 square league' of land contiguous to the rivers Gila and Colorado, in front of the confluence of the same, and also to the point named El Paso de los Algodones, of the said river Colorado, on the northern frontier of the State, measured and adjudicated in the year 1838, to Don Fernando Rodriguez, a resident and native of Hermosillo, was legally issued by the late Jose Justo Milla, contador of the general treasury of the State, and legally encharged with the said treasurer's office at the date referred to; and that in virtue of which he was competently authorized to form expedientes of lands, to measure and adjudicate the same and to issue titles therefor; and also that his signature, those of his assistants, and the seal stamped on said title are the same that they are accustomed to use in their official acts, and with which they have legalized all their official acts of like nature. Finally he certifies that the approval of the government, which is attached to the title and the certificate of Don Jose Maria Mendoza, are legal, and that their signatures are such as they have used in their official acts, and as such are entitled to all faith and credit, judicially or extrajudicially.

And at the request of the interested party I give this in Guaymas, on the eighth of June, 1847.

JOSE DE AGUILAR.

*Translation, Doc. No. 2.*

43 Jose Ma'ia Mendoza, superior chief of the treasury of the department of Sonora, certifies that from his excellency, the senior minister of state of del despacho de hacienda of the Republic, he has received a supreme order of which the following is a copy:

## MINISTERO DE HACIENDA.

SECTION 2ND. In view of the notes of your honor, numbers 7, 273, 403, and 414, dated February 23rd, 1839, May 26th, 17th of October, and 6th of November, last, in which you ask for instructions as to the manner of proceeding in relation to vacant lands in that department, his excellency the president has thought proper to resolve: that, until by legislative proceedings all doubts may be removed in relation to vacant lands, the initiative being previously taken by this ministry, you will direct that in matters relating to the lands referred to, they shall be determined in the junta de hacienda (board of the treasury), which shall be formed in a manner directed in a separate order of this date.

In answering your official communication No. 6, of the twenty-third of February, 1839, and in accordance, as well with article 74 of the decree of the seventeenth of April, as well as the law of the 7th of December of the same year, the proper junta (board) dictating the necessary measures in the matter, as far as their faculties may extend and when these matters shall reach the sphere contencioso, they shall be passed to the judge of the district for his determination.

44 You will bear in mind that in the said initiative that, with respect to vacant lands, this ministry proposes to make to the National Congress the point must be taken into consideration as to whether or not they are to remain assigned to the "Banco Nacional de Amortizacion," with the understanding that his excellency has directed that notwithstanding the order which I communicated to you on the twenty-third of January of the present year, and to the government of the department on the third of September last, in which it is declared that there shall only be delivered to the agent of the bank such property and public lands as may not be occupied by the Government or may be of interest to the service. You will suspend the delivery to the said agent of the lands that may not yet pass have been received until it shall have been determined whether or not they pertain to the bank; and if some have already been delivered, you will recover the same to the end that in all things these matters may be administered and dispatched in the manner as set forth. I say this to you by supreme order, and in reply to your inquiry for the corresponding ends, with the understanding that on this day I communicate the same to the government of the department, and to the junta directora (board of directors) of the said national bank, for their information and the necessary ends.

God and Liberty.

ECHVERRIA.

MEXICO, December 21st, 1840.

To the Superior Chief of the Treasury of Sonora.

I also certify that by virtue of the foregoing supreme order, the senior agent of the Banco Nacional de Amortizacion, in the department Lecen-

cedo, Don Manuel Maria Gaxiola, a resident of Alamo, returned  
 45 to me the expediente and other documents in relation to lands and  
 vacant lands, which had been transmitted to him by this gefatura,  
 in consequence of which he had continued administering and despatching  
 the said business of lands, on account of the public treasury under his  
 charge, in accordance with the laws, decrees, and regulations governing  
 these matters; also in the terms expressed in the supreme order of the  
 twenty-first of December last, before referred to. In witness whereof,  
 and for the security of the Señor Don Fernando Rodriguez, a resident of  
 Hermosillo, in relation to his lands, named Paso de los Algodones, del  
 rio Colorado, and in front of the confluence of this with the Gila, I give  
 this at his request, in Ures, on the thirtieth of May, 1841, on this common  
 paper, for want of the corresponding paper of the fourth seal, and with  
 the obligation on the part of the interested party to attach the required  
 stamped paper, as directed by law, in relation to revenues.

JOSE MARIA MENDOZA.

*Translation of Document No. 3.*

Jose Maria Mendoza, commissary-general of Sonora, and chief of the  
 section of liquidation of the extinguished departmental treasury, and  
 Florencio Trejo, second official of the general treasury of this State, occu-  
 pied in the same liquidation, certify, in due form of law, that in the said  
 office under our charge, there exists the original expediente of the lands  
 named El Paso de los Algodones, the proceedings of which were  
 46 taken in the year 1838, in consequence of the registry made by the  
 Señor Don Fernando Rodriguez, a resident of Hermosillo, the  
 measurement of which was made in accordance with the laws on the sub-  
 ject, and includes five square leagues of land situated on and contiguous  
 to the rivers Gila and Colorado, in front of the confluence of the same;  
 that the corresponding sale having been made by the treasury-general of  
 the State, the corresponding title was issued by him in favor of the said  
 interested party, Don Fernando Rodriguez, and we further certify that  
 said original expediente, having been found in that portion of the archives  
 pertaining to the treasury department existing in Arispe, it was transmit-  
 ted, with others, to our possession, after having formed the minute notice  
 in relation to lands which we sent to the supreme government of the State  
 on the 25th of December last. In witness whereof we give this at the  
 request of the interested party at Ures, on the 15th of January, 1858.

[SEAL.]

JOSE MARIA MENDOZA.

FLORENCIO TREJO.

Ygnaceo Pesquera, constitutional governor of the State of Sonora, cer-  
 tifies that the signatures of the officers who sign the foregoing certificate  
 are such as they are accustomed to use in public and private documents  
 signed by them. And for the necessary ends, I give this in the city of  
 Hermosillo, on the 10th of September, 1858.

Y. PESQUEIRA.

I. GUTIERREZ,

*Sec'y.*

47 I, R. C. Hopkins, being duly sworn, depose and say that the foregoing is a correct translation from the Spanish of the expediente and other documents of the sale and grant by the Mexican Government of Sonora of a tract of land containing five square leagues, situated near the junction of the Gila and Colorado rivers, and called El Paso de los Algodones. I further depose and say that I have seen in the archives of the treasurer's office of the State of Sonora, in the town of Ures, the capital of said State, the original expediente of said sale or grant, the foregoing being a translation of a "testimonio," or certified copy of said original, which in the month of February last I saw among and which at that time formed a part of the government archives of the State of Sonora. And I further say that there is or was, in the month of February last, in said archives of the treasury department of Sonora, a book of "Toma de Razon," or registry of grants of sales of lands made by the government of the State of Sonora; that these entries in this book appear to have been carefully made; that it extends over a period of a number of years, and covers the year 1838, and that in said book is found of the issuance, in the year 1838, of the grant of "El Paso de los Algodones" to Don Fernando Rodriguez. And I further say that I am acquainted with the signature of Jose Maria Mendoza, which occurs officially in the original, from which the foregoing translations were made, and also with the signature of Jose de Aguilar, which is also found in said original documents, and that I believe in said signatures, where they occur in said originals, to be the genuine signatures of the gentlemen referred to.

R. C. HOPKINS.

Subscribed and sworn to before me, a notary public in and for the city and county of San Francisco, State of California, this 6th day of December, A. D. 1873.

[SEAL.]

J. H. BLOOD,  
Notary Public.

Translation. Third seal. Two reals. For the year one thousand eight hundred and thirty-seven and eight hundred and thirty-eight. Estado Libre de Sonora.

Juan Jose Encinal, second alcalde of this city of Hermosillo, do certify as far as I can, ought, and the laws permit, and Senor Don Fernando Rodriguez, of this city, has the means and interests of his own quite enough and sufficient to stock and cultivate the five sitios of land which he registered on the fourth of January last, and which were adjudicated in his favor by the treasury-general of the State, comprising the tracts of land lying contiguous to the rivers Gila and Colorado in front of the confluence of the same, as well as to the Paso de los Algodones, on the said river Colorado, on the northern frontier of this State.

49 In witness whereof, I give him the present in duplicate at the request of the interested party, in Hermosillo, on the twenty-seventh March, 1838, authorized and signed by assistant witnesses, in default of a notary public, there being none authorized by law.

JUAN J. ENCINAS.

Assistant: JULIAN RODRIGUEZ.

Assistant: SANTIAGO SANCHEZ.



Arispe, April 4th, 1838. Let a copy hereof be annexed to the original proceedings and another to the grant.

JOSE JUAN MILLA.

Translated by John Clark. San Francisco, December 5th, 1879. Translation. L. S. Third seal year. 1856-1857. Four reales.

MEXICAN REPUBLIC, GOVERNMENT OF THE STATE OF SONORA.

The licentiate, Jose de Aguilar, governor of the State of Sonora, do hereby certify in due form of law that the present title, comprising five sitios of land contiguous to the rivers Gila and Colorado, opposite their confluence, as well as to the place named El Paso de los Algodones, on said river Colorado, on the northern frontier of this State, measured and adjudicated in the year 1838 in favor of Don Fernando Rodriguez, a resident  
50 and native of Hermosillo, was lawfully issued by the late Don Jose Pasto Milla, paymaster of the treasury-general of the State, and legally in charge of the said treasury at the time referred to, in virtue whereof he had competent authority to institute proceedings relative to lands, measure them, adjudicate, and give titles therefor, and that his signature and that of the assistant witnesses, and seal stamped on the said title, are the same that they use in their official acts, and with which they have legalized all their acts of the same nature. I finally certify that the approval of the Government annexed to the title and certificate of Don Jose Ma Mendoza are lawful, and the signatures are those they have used in the business in their charge, and as such they merit full faith and credit in judicial and extra-judicial matters.

And at the request of the interested party I give the present at this port of Guaymas, on the eighth day of the month of June, one thousand eight hundred and fifty-seven.

JOSE DE AGUILAR.

Translated by John Clark. San Francisco, December 5th, 1879.

TUCSON, ARIZONA, January 15, 1891.

A true copy of a paper (printed pamp'let) on file in the office of the surveyor-general for the district of Arizona.

[SEAL.]

ROYAL A. JOHNSON,  
U. S. Surveyor-General.

51 And be it further remembered, that on the same day, to wit the second (2) day of February, A. D. 1892, there was filed in the office of said clerk, in said city of Denver, State of Colorado, an affidavit, which said affidavit is in the words and figures following, to wit:

In the United States court of private land claims.

In re petition of Algodones Land Comapny for confirmation of grant.

STATE OF COLORADO,

County of Arapahoe ss:

*A'fidavit for order transmitting papers.*

E. M. Sanford, being by me first duly sworn, doth upon his oath depose and say: I reside at Prescott, in the Territory of Arizona, and have been



admitted to practice in the supreme court of the Territory of Arizona and of the United States. I am an attorney for the Algodones Land Company, the petitioner, a corporation erected and organized under and by virtue of the laws of the Territory of Arizona. That on the second day of February, 1892, the said Algodones Land Company filed in the office of the clerk of the United States court of private land claims at Denver, in said State, a petition to inquire into and decide the validity of a certain Mexican land grant, owned by said petitioner, lying and being situate in the Territory of Arizona, and known as the Rancho El Paso de los Algodones.

That the original grant title whereby the State of Sonora, Mexico, granted said lands to one Senor Don Fernando Rodriguez is not in the possession or under the control of your petitioner, but the same is, together with divers and sundry papers and records relating to said grant, in the custody and possession of honorable Royal A. Johnson, as surveyor-general of the district of Arizona as keeper thereof, at Tucson, Arizona.

That among said papers and records are certain documents, to wit, certain photograph copies of purported records of the Sonora government, which are essential and necessary for said petitioner to have, in the clerk's office of this court, that the said petitioner may properly arrange and prepare its case herein.

E. M. SANFORD.

Subscribed and sworn to before me this the second day of February, A. D. 1892.

[SEAL.]

JAMES H. REEDER,  
Clerk of the U. S. Court of Private Land Claims,  
By THOS. B. BALDWIN,  
Deputy.

And be it further remembered that on the same day, to wit, the second (2) day of February, A. D. 1892, an order was made by one of the justices of this court, which was attached to and under the same cover with the affidavit last before written, which said order is in the words and figures following, to wit:

"It appearing to me the undersigned, associate justice of the United States court of private land claims, that the petition of the Algodones Land Company has been filed in said court, to determine the validity and decide upon a certain Mexican land grant, situate in the Territory of Arizona, and known as the Rancho El Paso de Algodones, and that there is in the possession and custody of the honorable Royal A. Johnson, as surveyor-general of the district of Arizona, certain records and papers relating to said land grant, which ought to be safely transmitted to the clerk of this court, it was, therefore, on application of the said petitioner, by his attorney, E. M. Sanford, that a writ of this court be forthwith issued, directing the said surveyor-general and his successors in office to transmit all records and papers in his office in anywise relating to or touching upon said land grant to the clerk of the said court at Denver, in the State of Colorado, with all convenient speed.

Dated at chambers this 2nd day of Feb'y, 1892.

WILBUR F. STONE,  
Associate Justice of the U. S. Court of Private Land Claims.

54 (The cover of said affidavit and order bears the following endorsements: U. S. court private land claims, State of Colorado. In re Algodones Land Co. to confirm grant. Affidavit for order transmitting papers. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, dup'ty clerk.)

And be it further remembered, that on the same day, to wit, the second (2) day of February, A. D. 1892, a writ was issued by the clerk of this court, which said writ is in the words and figures following, to wit:

In the United States court of private land claims.

In relation petition of Algodones Land Company for confirmation of title

*Writ for transmittal of papers and records.*

55 *The United States of America to Honorable Royal A. Johnson, as Surveyor-General of the District of Arizona, and his successors in office, greeting:*

Whereas, it appears to us that a petition has been filed in the office of the clerk of the United States court of private land claims by the Algodones Land Company, a corporation, to determine the validity and decide upon a certain Mexican land grant known as the Rancho El Paso de los Algodones, situate in Arizona; and

Whereas an application has been made to honorable Wilbur F. Stone, an associate justice of our said court, at chambers in Denver, Colorado, wherein it is shown that you have in your possession the original title aforesaid, and other records and papers relating thereto; and

Whereas on said application it was duly ordered that a writ under the hand of the clerk and seal of this court, do issue to you, directing you to safely transmit to this office, all papers and records in your possession or under your control, which in anywise relate to said Algodones grant, with all convenient speed.

This is therefore to command you that you do safely transmit all the records and papers in your office as surveyor-general of the district of Arizona which in anywise relate to the grant or claim for land within the Territory of Arizona known as the Rancho El Paso de los Algodones aforesaid, in relation to which said petition has been brought under an act of Congress entitled "An act to establish a court of private land claims," approved March 3, 1891, for the purpose of determining the validity of such title, and that the same may be inquired into and decided with all convenient speed.

Witnesseth, the honorable Joseph R. Reed, chief justice of the United States court of private land claims, with the seal of the court affixed. Done at the clerk's office of said court, at the city of Denver, State of Colorado, this the second day of February, A. D. 1892.

[SEAL.]

JAMES H. REEDER,  
Clerk of the United States Court of Private Land Claims,  
By THOMAS B. BALDWIN,  
Deputy Clerk.

(Which said writ bears the following endorsements: In the U. S. court of private land claims. In re petition of Algodones Land Company for confirmation of title. Writ for transmittal of papers and records. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.)

57 Attached to said writ is proof of service thereof, which said proof of service is in the words and figures following, to wit:

*Proof of service.*

TUCSON, A. T., January 9th, 1892.

I hereby certify that I received the within writ on the 9th day of February, 1892, and that I personally served the same upon the said Royal A. Johnson, surveyor-general of the district of Arizona, by delivering to him personally a true copy of the within writ at his office in the city of Tucson, Pima County, Arizona.

This writ returned as the law directs this 9th day of February, 1892.

R. H. PAUL,  
U. S. Marshal.

And be it further remembered that afterwards, to wit, on the second (2) day of March, A. D. 1892, and order was made by one of the justices of this court, which said order is in the words and figures following, to wit:

In the United States court of private land claims, sitting at Denver, Colo.

In re petition of Algodones Land Company for confirmation of title.

58 To Joseph C. Perry, Deputy for U. S. Surveyor-General, District of Arizona:

The matter of a return to the writ for transmittal of records and papers issued in the above-entitled action, dated February 2nd, 1892, and proceedings thereon, which you presented in person to the clerk of this court on February 18th, 1892, and have remained in Denver, Colorado, ever since, awaiting the action of the court thereon, is now under consideration by a full court.

You are requested to remain in Denver with the papers and records referred to until the further order of the court or a judge thereof.

Dated at chambers, Denver, Colo., March 2nd, 1892.

WILBUR F. STONE,  
Associate Justice.

Filed March 2, 1892.

Which said order bears the following endorsements: Order of court to Joseph C. Perry, deputy for U. S. surveyor-general of Arizona Territory. Filed March 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. E.

And be it further remembered, that afterwards, to wit, on the fifth (5) of March, A. D. 1893, an order was made by one of the justices of this court, which said order is in the words and figures following, to wit :

In the United States Court of Private Land Claims, sitting at Denver, Colorado.

In re petition of Algodones Land Company.

*To Joseph C. Perry, Deputy for the Surveyor-General of Arizona :*

On consideration it is ordered that you return to Arizona and take with you the papers in the matter of the rancho del Paso de Las Algodones, and retain same, subject to any order of the above-entitled court, or an associate justice thereof, that may be made in the premises.

Dated at chambers, Santa Fe, N. M., March 5th, 1892.

WILBUR F. STONE,  
*Associate Justice.*

Which said order bears the following endorsements: Order of court to Joseph C. Perry, deputy for the U. S. surveyor-general, dis't of Arizona, to return to Arizona with papers in the matter of rancho del El Paso de los Algodones. Filed March 9, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. "E." Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

And be it further remembered that afterwards, to wit, on the seventh (7) day of March, 1892, an appearance was filed in the office of said clerk, in said city of Denver, Colorado, which said appearance is in the words and figures following, to wit :

UNITED STATES OF AMERICA, ss :

In the court of private land claims, Colorado district, Denver, Colorado.

THE ALGODONES LAND COMPANY, PLAINTIFF,	} No. 1.
vs.	
THE UNITED STATES, DEFENDANT.	

Comes now the United States, by its attorney, and enters appearance in the above-entitled cause.

MATT. G. REYNOLDS,  
*U. S. Attorney.*

Which said appearance of the defendant bears the following endorsements: Rancho El Paso de los Algodones, P. L. C., No. 6, Arizona. Filed March 7, 1892. James H. Reeder, clerk, per Thos. B. Baldwin, deputy clerk. Matt. G. Reynolds, U. S. attorney.

And be it further remembered that afterwards, to wit, on the eighth (8) day of April, A. D. 1892, there was filed in the office of said clerk, at said city of Denver, State of Colorado, an answer, which said answer is in the words and figures following, to wit :

UNITED STATES OF AMERICA, *ss*:

In the court of private land claims, Colorado district, to the June term, 1892.

ALGODONES LAND COMPANY (A CORPORATION),	}	No. 1.
plaintiff,		
<i>vs.</i>		
UNITED STATES, DEFENDANT.		

*Answer.*

Comes now the United States, by its attorney, Matt. G. Reynolds, and by leave of court files this, its answer to the petition filed in the above-entitled cause, and says:

It has no knowledge or information sufficient to enable it to form a belief as to whether plaintiff is a corporation, duly organized and existing under the laws of the Territory of Arizona, or not. It denies  
62 that plaintiff owns or lawfully holds and possesses a certain tract of land commonly known and described as the rancho El Paso de los Algodones, situated in the southwestern corner of the Territory of Arizona, and fully described and set forth in said petition.

It denies that plaintiff owns, holds, and possesses said land under and by virtue of any lawful instrument in writing, taken and designated as a grant title, bearing date of the 12th day of April, 1838, or any date.

It denies that the alleged grant title of the above-mentioned date was duly made and executed by or on behalf of the State of Sonora of the Republic of Mexico, under and by virtue of the laws therein mentioned, or any other laws.

It denies that the officers duly authorized by law to dispose of the public lands of the State of Sonora did sell or convey to one Señor Don Fernando Rodriguez, on the 12th day of April, 1838, or at any other time, the land described in said petition, or that proper steps as required by law were taken and performed by the officers empowered by law to dispose of the public lands as a condition precedent to the passing of the title from the State.

It says it has no knowledge or information sufficient to enable it to form a belief as to what, if any, official relation Don Jose Justo Milla sustained to the State of Sonora; but it says that he had no warrant or authority under the laws of said State or the Republic of Mexico  
63 to dispose of, upon any condition, the public lands of said State, and that if it appear that he was the auditor-general or paymaster of the treasurer-general of said State, that he had no warrant or authority under the laws of said State to dispose of its public lands.

It denies that he did dispose of or execute for an' on behalf of said State to Señor Don Fernando Rodriguez a grant title to the land described in plaintiff's petition on the 12th day of April, 1838, or at any other time; and it therefore avers that if the plaintiff by proper derangement of title claims to own and possess said property under a sale and conveyance by said Milla that the same was not his genuine signature but a forgery.

It further avers that said alleged grant title or claim, if any, was never recorded in the book of "Toma de Razon" for the year 1838, or in any other book or record in the archives of said State.

It denies that said alleged grantee, Rodriguez, ever complied with the conditions imposed by the laws of the State of Sonora and the Republic of Mexico upon citizens to whom its public lands were disposed, and avers that the conditions attached to and running with said grant, as imposed by law, as well as by the terms of the grant itself, were never complied with.

That the officers making said alleged grant, if they did so make it, had no warrant or authority to waive the conditions of settle-  
64 ment as imposed by law; that the terms and conditions of settle-  
ment imposed by the grant are so indefinite and uncertain and  
problematical that they are in violation of law and in excess of the powers of the officers of said State to make.

It further avers that possession and cultivation of the same was never taken and performed as required by law.

It says it has no knowledge or information as to whether the amount of land claimed is correct or not.

That it has no knowledge or information as to whether plaintiff is the legal representative by proper deraignment of title from the alleged original grantee, Rodriguez.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiff be put to its proof on all the allegations in said petition, particularly the genuineness of the signatures of the officers aforesaid, by whose act it is alleged said grant was made, as well as a complainee with all the conditions precedent and subsequent and as required by the act approved March 3, 1891, under which this court assumes jurisdiction of this controversy; and that it shall be put to its proof as to its presented interest, or supposed interest, therein.

Now having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleg'd grant, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

MATT. G. REYNOLDS, *U. S. Attorney.*

65 Which said answer bears the following endorsements, to wit:

Case No. 1. File No. 29. Algodones Land Company, plaintiff, vs. United States, defendant. Rancho El Paso de los Algodones grant. Answer. Filed in Denver, Colo., April 8th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy.

And be it further remembered that afterwards, to wit, on the twenty-fifth day of April, A. D. 1892, there was filed in the office of said clerk at Santa Fe, Territory of New Mexico, a motion, which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss:

In the court of private land claims, Santa Fe, New Mexico.

ALGODONES LAND COMPANY, PLAINTIFF,	}	No. 1.
vs.		
THE UNITED STATES, DEFENDANT.		

66

*Motion.*

Comes now the United States, by its attorney, Matt. G. Reynolds, and represents to the court that the original papers relating to the title sought



to be confirmed in the above-entitled cause are not in the custody of Royal A. Johnson, surveyor-general of the Territory of Arizona, his office located at Tucson, in said Territory; that in order that the Government may properly make its defense in said action, it is necessary that it have access to the papers relating to the same.

Testimony is about to be taken on behalf of the plaintiff as well as the Government, at the towns of Hermosillo and Guaymas, in the State of Sonora, Old Mexico, and in order that the same may be properly taken, the original grant papers or expediente of title are absolutely necessary, as well as the exhibits and photographs on file in said office.

Therefore, the defendant asks that an order may be made and directed to said surveyor-general, requiring him to turn over to the clerk of this court, taking his receipt therefor, all the papers on file in his office in any manner relating or pertaining to said claim or grant, and to that end it will ever pray.

MATT. G. REYNOLDS,  
*U. S. Attorney.*

67 Which said motion bears the following endorsements, to wit:  
Algodones Land Co., plaintiff, vs. The United States, defendant.  
Motion. Filed in my office this the 25th day of April, A. D. 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

And be it further remembered that on the same day, to wit, the twenty-fifth (25) day of April, 1892, an order was made by this court, which said order is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the court of private land claims, Santa Fe, New Mexico.

ALGODONES LAND COMPANY, PLAINTIFF,	} No. 1.
<i>vs.</i>	
THE UNITED STATES, DEFENDANT.	

*To Royal A. Johnson, Surveyor-General, Territory of Arizona:*

You are hereby commanded and directed to deliver to the clerk of this court, James H. Reeder, taking his receipt therefor, all of the papers on file in your office relating or pertaining to a claim against the United States, on file therein, commonly known and designated as the "El Paso de los Algodones grant."

68 Given under the hand of the chief justice of the court of private land claims, attested by the seal of said court, at Santa Fe, New Mexico, this 25th day of April, A. D. 1892.

JOSEPH R. REED,  
*Chief Justice.*

Which said order bears the following endorsements, to wit :

TERRITORY OF ARIZONA, COUNTY OF PIMA.

I hereby certify that I received the within order on the 25th day of April, 1892, and personally served the same on the 27th day of April, 1892, by delivering to Royal A. Johnson, surveyor-general of Arizona, at at his office in the city of Tucson, in said Territory, a true copy of said order.

R. H. PAUL,  
*U. S. Marshal.*

Dated Tucson, A. T., April 27th, 1892.

Also this endorsement :

Order. Filed in my office this the 1st day of May, 1892.

JAMES H. REEDER, *Clerk*,  
By IRENEO L. CHAVES, *Deputy*.

And be it further remembered that afterwards, to wit, on the sixth (6) day of June, A. D. 1892, the same being the second day of the June term of this court, at Denver, Colorado, the following proceedings were had, to wit :

69 Court met this day at 10 a. m.

Present : Hon. Joseph R. Reed, chief justice ; Hon. Wilbur F. Stone, associate justice ; Hon. W. W. Murray, associate justice ; Hon. Henry C. Sluss, associate justice ; Mr. Matt. G. Reynolds, U. S. atty. ; Mr. Albert H. Jones, marshal ; Mr. Euebio Chacon, translator ; Mr. Thomas B. Baldwin, dep. clerk. Absent : Hon. Thos. C. Fuller, associate justice ; Mr. James H. Reeder, clerk.

Now, at this day the cause of the Algodones Land Company, plaintiff, vs. The United States, defendant, was called for trial, and the parties announcing themselves ready, same was proceeded with. The hearing of said cause not being completed, the court adjourned until 10 o'clock a. m. the following day.

The record shows the trial of said cause was resumed on the following day, to wit, the 7th day of June, A. D. 1892, the same being the third (3) day of the June term at Denver, Colorado, and adjourned to the following day ; that on the following day said cause was resumed, to wit, on the eighth day of June, the same being the fourth (4) day of said June term, and then adjourned to the following day.

On the following day, to wit, the ninth (9) of June, the same being the fifth day of the said June term, at Denver, Colorado, the court announced its conclusion that plaintiff's claim be rejected, and the petition be dismissed. Whereupon it was ordered that plaintiff have until

70 to-morrow morning to file petition for rehearing.

Court met on the following day, to wit, the tenth (10) day of June, the same being the sixth (6) day of said June term, 1892, of said court at Denver, Colorado, and having heretofore announced its opinion in the case of the Algodones Land Company, plaintiff, vs. The United States, defendant, holding that the plaintiff's petition should be dismissed, and plaintiffs having filed a petition for rehearing, it is ordered that said petition stand continued to the August term at Santa Fe, N. M.

And be it further remembered that afterwards, to wit, on the fifteenth (15) day of August, 1892, the same being the first (1) day of the August term of this court (1892), at Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit :

ALGODONES LAND COMPANY, PLAINTIFF, }  
 vs. } No. 1. (Denver.)  
 THE UNITED STATES, DEFENDANT }

Comes now this cause, on the first day of August term, A. D. 1892, at Santa Fe, New Mexico, to be heard upon the application for a new trial herein on behalf of the plaintiff; and comes the plaintiff, by its attorneys, Coe & Carpenter, A. M. Stevenson, and E. M. Sanford; and comes the defendant by Matt. G. Reynolds, United States attorney for this court; and the court being duly informed in the premises does consider and order that a trial de novo herein be, and the same is hereby, granted, and the judgment heretofore entered in this cause be, and the same is hereby, wholly set aside, vacated and held for naught, and the said cause be continued until the October term of this court at Denver, Colorado.

It is further ordered that the clerk of this court do transmit a certified copy of the foregoing order to the office of the clerk of this court at Denver, there to be by him filed and recorded in this cause.

And be it further remembered that afterwards, to wit, on the thirtieth (30) day of August, the same being the sixteenth (16) day of the August term of said court, sitting at Santa Fe, Territory of New Mexico, the following order was made by the court, to wit :

It is ordered that the term of this court heretofore established at Denver, Colorado, be discontinued on and after the first day of October, 1892, and that all causes which may be pending on said first day of October, on the docket at that place, be transferred for trial and final disposition at Santa Fe.

It is also ordered that the clerk remove all records, files, and documents and papers pertaining to his office in Denver, or to any cause pending in the court there, to the office at Santa Fe.

In accordance with the foregoing order, all causes which were pending on the said first day of October on the docket at Denver, Colorado, were transferred for trial and final distribution at Santa Fe on the day of October, 1892, among which being the case of the Algodones Land Company vs. The United States, it being No. 1 on the dockets of said court at Denver, and on being transferred to Santa Fe the number of said case was changed and now appears as No. 47 on the docket of said court at Santa Fe.

And be it further remembered that afterwards, to wit :

On the fourteenth day of December, 1892, the same being the thirteenth (13th) day of the December term, 1892, the following proceedings were had, to wit :

THE ALGODONES LAND COMPANY, PLAINTIFF, }  
 vs. } No. 47.  
 THE UNITED STATES, DEFENDANT }

Come now the parties in the above-entitled cause, plaintiffs appearing in person and by their attorneys, Earle B. Coe, esq., A. M. Stevenson, S.

L. Carpenter, and E. M. Sanford, esqs., and the United States by Matt. G. Reynolds, esq., United States attorney. Upon motion of Mr. Reynolds Francis J. Hiney, esq., was allowed to associate himself in this cause with the United States attorney. Thereupon the parties in the above-entitled cause announced themselves ready for trial. Plaintiffs being put to their proof as to the allegations in their petition and to show cause why said grant should be confirmed unto them, introduced *and* oral and documentary evidence. Here action in said cause was suspended.

Court adjourned until to-morrow at 10 o'clock a. m.

Upon the trial of this cause on said above-named day, to wit, the fourteenth day of December, A. D. 1892, the following testimony, oral and documentary, was offered and introduced :

On motion of the plaintiff, the Algodones Land Company, by its attorneys, Earl B. Coe was substituted as plaintiff in this action, as succeeding to all the right, title, and interest of said Algodones Land Company, and that this cause be prosecuted and proceeded with in the name of Earl B. Coe, plaintiff, versus The United States, defendant.

Mr. STEVENSON. We offer first the original title paper or testimonio of the grant of the land involved in this controversy by the state of Sonora to Fernando Rodriguez, dated on the 12th of April, 1838, and ask that it be marked petitioners' Exhibit A.

#### EXHIBIT A.

Is a document in the Spanish language, a translation of which was offered, attached to the petition filed in this cause, and marked Exhibit B of said petition ; which said translation and Exhibit B of said petition is incorporated in this transcript and commences on page twelve (12) and ends on page fifty (50) hereof.

Mr. STEVENSON. Now offer certificate signed by Juan Jose Encinas, alcalde city of Hermosillo, State of Sonora, as to the capability of Rodriguez to stock the land in controversy, dated Hermosillo, 27th of March, 1838. (Petitioner's Exhibit B.)

#### EXHIBIT B.

Said exhibit is in the Spanish language ; a translation thereof is in the words and figures following, to wit :

Third seal (l. s.), 2 reales for the years 1837 and 1838.

Juan Jose Encinas, second alcalde of the city of Hermosillo.

I certify, so far as I am able, must, and the law permits me, that Señor D. Fernando Rodriguez of this community has means and proportions sufficient and adequate to settle and cultivate the five sitios of land that he registered on the 4 of January last, and that were adjudged to him by the treasury-general of the State, embraced in the lands that are contiguous to the Gila and Colorado rivers, frowning their confluence, as also the Paso de los Algodones of the said Colorado River on the northern boundary of this State, and that it may be a record where it corresponds I give him the present as duplicate, at his request, in Hermosillo, on the

27 day of March of the year 1838, authorized and signed with attending witnesses. For lack of a notary, as there was none according to law, I attest.

JUAN JOSE ENCINAS. [RUBRIC.]

Witt: JULIAN RODRIGUEZ. [R.]

Witt: SANTIAGO SANCHEZ. [R.]

ARISPE, 14 day of April, 1838.

Let a copy be attached to the original expediente and another to the title of the grant.

JOSE JUSTO MILLA. [R.]  
(Official translation.)

Mr. STEVENSON. We offer a certificate of Jose Maria Mendoza as treasurer-general of the State, dated 21st day of December, 1840, certifying that he had received a letter and attached certificate from the Supreme Government relating to the lands in this case. (Petitioner's Exhibit C.)

#### EXHIBIT C.

Said exhibit is in the Spanish language; the translation thereof is in the words and figures following, to wit:

Jose Maria Mendoza, superior chief of the treasury department of Sonora, certifies that from his excellency, the senior minister of state of the despacho de hacienda of the Republic, he has received his supreme order, of which the following is a copy:

#### "MINISTERIO. DE HACIENDA.

SECTION 2. In view of the notes of your honors, numbers 7, 273, 403, and 414, dated February 23rd, 1839, May 26th, 17th of October, and 5th of November last, in which you ask for instructions as to the manner of proceeding in relation to vacant lands in that department, his excellency the President has thought proper to resolve: That until by legislative proceedings all doubts may be removed in relation to vacant lands, the initiative being previously taken by this ministry, you will direct that in matters relating to the lands referred to they shall be determined in the junta de hacienda (board of the treasury), which shall be formed in the manner directed in a separate order of this date.

In answering your official communication, No. 6, of the 23rd of February, 1839, and in accordance as well with article 74 of the decree of the 17th of April, as well as the law of 7th of December of the same year, the proper junta (board) dictating the necessary measures in the matter as far as their faculties may extend, and when these matters shall reach the sphere contencioso they shall be passed to the judge of the district for his determination. You will bear in mind that in the said initiative that with respect to vacant land this ministry proposes to make to the national congress the point must be taken into consideration as to whether or not they are to remain assigned to the "Banco Nacional de Amortizacion,"

with the understanding that his excellency has directed that, notwithstanding the order which I communicated to you on the 23rd of January of the present year and to the government of the department on the 3rd of September last, in which it is declared that there shall only be delivered to the agent of the bank such property and public land as may not be occupied by the Government or may be of interest to the service,

77 you will suspend the delivery to the said agent of the land that may not yet have been received until it shall be determined whether or not they pertain to the bank, and if some have already been delivered you will recover the same, to the end that in all things these matters may be administered and dispatched in the manner as set forth. I say this to you by supreme order and in reply to your inquiry for the corresponding ends, with the understanding that on this day I communicate the same to the government of the department and to the junta directory (board of directors) of the said national bank for their information and the necessary ends.

God and liberty.

ECHEVERRIA.

MEXICO, December 21st, 1840.

*To the Superior Chief of the Treasurer of Sonora :*

I also certify that by virtue of the foregoing supreme order the senior agent of the Banco Nacional de Amortex Acon, in the department Licenciado, Don Manuel Maria Gazeola, a resident of Alamo, returned to me the expedienti and other documents in relation to lands and vacant lands which had been transmitted to him by this gefatura, in consequence of which he had continued administering and dispatching the said business of lands on account of the public treasury under his charge in accordance with the laws, decrees, and regulations governing these matters also

78 in the terms expressed in the supreme order of the 21st of December last before referred to.

In witness whereof and for the security of the Senior Don Fernando Rodriguez, a resident of Hermosillo, in relation to his lands named Paso de los Algodones de Rio Colorado, and in front of the confluence of this with the Gila, I give this at his request in Ures, on the 30th of May, 1841, on this common paper for want of the corresponding paper of the 4th seal, and with the obligation on the part of the interested party to attached the required stamped paper, as required by law in relation to revenues.

JOSE MARIA MENDOZA."

Mr. STEVENSON. We offer certificate of Jose Maria Mendoza, treasurer-general of the State of Sonora, dated on the 6th of June, 1847, certifying that he had corresponded with the supreme Government of Mexico relative to the grant to Rodriguez. (Petitioner's Exhibit D :)

#### EXHIBIT D.

Said exhibit is in the Spanish language ; the translation thereof is in the words and figures following, to wit :

(L. S. Commissary-General, State of Sonora.)



JOSE MARIA MENDOZA, commissary-general of the State of Sonora :

I certify that with this date I have sent on a separate sheet, and  
79 as a matter of communication to his excellency the minister of state  
and the land office of the Republic, the official communication, that is  
the following :

"Commissary-General of the State of Sonora :

Most Excellent Sir : Señor D. Fernando Rodriguez, a resident of the  
city of Hermosillo, has presented to me the grant title that the treasury-  
general of the (torn) State executed to his favor on the 12 day of April,  
1838, for five sitios of public land for agriculture, the said Señor Rod-  
riguez, registered contiguous to the Gila and Colorado rivers fronting  
their confluence and the place called the Paso de los Algodones, of the  
said Rio Colorado, on the north of this State, and that (torn) surveyed,  
valued, proclaimed, and sold at auction, given and adjudicated in the terms  
appearing from the authorized testimonio, which I have the honor to send  
to you with this, to the end that, as I attentively pray, you may bring to  
the knowledge of his excellency the President of the Republic, which is  
the object for which the said S. D. Fernando Rodriguez has presented to  
me the said title of the grant of the confluence of the Gila and Colorado  
and Paso de los Algodones.

I enjoy the honor of stating to your excellency my greatest veneration  
(torn) respectful regards.

God and liberty.

JOSE MARIA MENDOZA.

URES, *Juna* 6, 1847.

His excellency the minister of state and of the land office of the Republic  
Mexico.

And that it may be a record where it corresponds, I extend the  
80 present at the request of the interested party, Sr. D. Fernando  
Rodriguez, at Ures, capital of the State of Sonora, on the 6 day  
June, 185 (the last number torn).

JOSE MARIA MENDOZA [R.]

(Official translation.)

Mr. STEVENSON. Offer certificate signed by Jose Maria Mendoza and  
Florencio Trejo, dated 5th of January, 1858, certifying that they had exam-  
ined the title papers in this case, and find same are genuine; attached also  
we offer certificate of Pesguerra, the then governor of the State, certifying  
to the genuineness of the signature of Mendoza and Trejo. (Petitioner's  
Exhibit E.)

#### EXHIBIT E.

Second class (L. S.). Seal. 3-4 reals for the years 1858 and 1859.

Jose Maria Mendoza, pensioned commissary-general of Sonora, and chief  
of yhr section of liquidation of the defunct departmental treasury, and  
Florencio Trejo, second officer that was, of the general (treasury) of this  
State, employed in the said section of liquidation.

We certify, so far as we are able, must, and are by law permitted, that  
in the said office of our charge exists the *the* original expediente of  
81 the lands called "El Paso de los Algodones," made in the year 1838,  
following the registracion made by Señor D. Fernando Rodriguez,

resident of Hermosillo; the survey of which was made according to the laws bearing upon the subject, and it includes five sitios of land located at and contiguous to the Gila and Colorado rivers, fronting their confluence; that the corresponding auctions and sale, and entire into the public general treasury of the State of Sonora, having been verified, this (the treasury) executed the corresponding grant title in favor of the said Señor D. Fernando Rodriguez; and finally, we certify that *that* the original expediente having been found in that portion of the archives corresponding to the said treasury, that exists in Arispe, it was sent with others to us after the detailed report on lands was formed, which, on the 29th of December last, we gave to the government of the State, and that it may be a record where it corresponds, we extend the present at the request of the said party in interest, at Ures, on the 15th day of January, 1858.

JOSE MARIA MENDOZA. [R]  
FLORENCIO TREJO. [R]

(L. S. Republic of Mexico, government of the State of Sonora).

Ignacio Pesquerra, constitutional governor of the State of Sonora, certifies that the signatures of the employees that authorize the present certificate is that which they use in the official and particular papers that they give out, and for its effects I give the present at the city of Hermosillo, on the 10 day of September, 1858.

Y. PESQUIERA. [R]  
J. GUTTIERREZ, [R]  
*Secretary.*

(Official translation.)

Mr. STEVENSON. Now offer certificate of Jose de Aguilar, dated Guaymas on the 8th day of June, 1857, certifying that the grant of land in this case to Rodriguez, had been approved by the supreme Government. (Petitioner's Exhibit F.)

#### EXHIBIT F.

Said exhibit is in the Spanish language; the translation thereof is in the words and figures following, to wit:

Third seal (L. S.) 4 reals for the years 1856, 1857 (L. S.), Republic of Mexico, government of the State of Sonora.

The lawyer, Jose de Aguilar, governor of the State of Sonora:

I certify, in due form of law, that the present title which embraces five sitios of land contiguous to the Gila and Colorado rivers fronting their confluence, as also the place called the Paso de los Algodones of the said Colorado

83 River on the north boundary of this State, surveyed and adjudged in the year 1834 to Don Fernando Rodriguez, resident and native of Hermosillo, was duly extended by the late Don Jose Justo Milla, auditor of the treasury-general of the State, and lawfully in charge of the treasury at the time referred, and who by virtue of it was competent authority to make expedientes of lands, as also that his signature, that of the attending witnesses, and the seal stamped on said title, are the same that they

used in their official acts, and by which they have legalized all their acts of like nature, I finally certify that the approval of the government which is attached to the title, and the certificate of Don Jose Ma. Mendoza are legal, and their signatures are those that they have used in the affairs of their charge, and as such have deserved all faith and credit in the judicial and extrajudicial, and at the request of the party in interest, I extend this at this port of Guaymas on the 8<sup>th</sup> day of June, 1857.

JOSE DE AGUILAR. [RUBRIC.]

(Official translation.)

Mr. STEVENSON. Now offer deed for Maria Aguilar and others to Juan A. Robinson, dated October 18th, 1873. (Petitioner's Exhibit G.)

#### EXHIBIT G.

84 Which said exhibit is in the words and figures following, to wit:  
This indenture, made the eighteenth day of October, in the year of our Lord one thousand eight hundred and seventy-three, between Maria Antonia Aguilar, widow of Fernando Rodriguez, Fernando Rodriguez, Antonia Rodriguez, Joaquin Rodriguez, Francisco Rodriguezp, Adelaida Rodriguez, and her husband, Carlos E. Hale, and Carmen Rodriguez and her husband, Wenceslao Y. Cerri, and Annalia Rodriguez and her husband, Juan R. Moller, of the State of Sonora, Republic of Mexico, parties of the first part, and Juan A. Robinson, of the city and county of San Francisco, State of California, United States of America, the party of the second part.

Witnesseth, that the parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America, and of other good and valuable considerations, unto the said parties of the first part moving, from the party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever, all the right, title, and interest of the parties of the first part in and to the rancho known as "Paño de los Algodones," consisting of five Mexican leagues of land in Yuma County, Territory of Arizona, United States of America, and situated at the confluence of the

Colorado and Gila rivers, said rancho having been heretofore, to  
85 wit, in the year 1838, granted by the Mexican authorities to Fernando Rodriguez, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

	MARIA ANTONIO AGUILAR DE RODRIGUEZ.	[SEAL.]
	F. RODRIGUEZ.	[SEAL.]
	M. ANTONIA RODRIGUEZ.	[SEAL.]
	JOAQUIN RODRIGUEZ.	[SEAL.]
	FRANCISCO RODRIGUEZ.	[SEAL.]
	ADELAIDA RODRIGUEZ DE HALE.	[SEAL.]
	CHAS. E. HALE.	[SEAL.]
	CARMEN RODRIGUEZ DE HERRI.	[SEAL.]
86	W. HERRI.	[SEAL.]
	AMALIA RODRIGUEZ DE MOLLER.	[SEAL.]
	J. N. MOLLER.	[SEAL.]

Signed, sealed, and delivered in the presence of—

EMO CLAUSEN.

A. WILLARD,

*U. S. Consul.*

[Seal U. S. consul.]

CONSULATE OF THE UNITED STATES OF AMERICA,

*At Guaymas, Mexico.*

I, the undersigned consul of the United States of America for Guaymas, Mexico, and the dependencies thereof (duly commissioned and appointed), do hereby certify that, on this eighteenth day of October, A. D. 1873, personally appeared before me, Maria Antonia Aguilar (de Rodriguez), widow of Fernando Rodriguez, of Sonora, Mexico; Fernando Rodriguez, Antonia Rodriguez, Joaquin Rodriguez, Francisco Rodriguez, Adelaida Rodriguez (de Hale) and her husband, Carlos E. Hale; Carmen Rodriguez (de Cerri) and her husband, Wencelasy Cerri; Amalia Rodriguez (de Moller) and her husband, Juan A. Moller; known to me to be the only heirs of Fernando Rodriguez, of Sonora, Mexico (deceased), and the persons who are described in, and who executed the foregoing instrument or deed, and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned. And I further certify that Adelaida Rodriguez de Hale, wife of

87 Carlos E. Hale; Carmen Rodriguez de Y Cerri, wife of Wenceslas Y Cerri, and Amalia Rodriguez de Moller, wife of Juan A. Moller, known to me to be married women (whose names are subscribed as aforesaid), that they were made acquainted by me separately with the content of the foregoing instrument and acknowledged, on examination apart from and without the hearing of their husbands, that they executed the signing of said document or instrument freely and voluntarily, without fear or compulsion or undue influence of their husbands, and they do not wish to retract the execution of the same.

In witness whereof and in testimony of all the foregoing, I have set my hand and affixed the seal of the consulate at Guaymas, the day and year before written.

[Seal of U. S. consul.]

A. WILLARD,

*Consul.*

Across the last page thereof is written the following, to wit:

Recorded in the office of the county recorder of the city and county of San Francisco, January 26th, A. D. 1874, at 21 mins. past 3 p. m., in liber 729 of deeds, page 48.

O. W. FRANK,  
County Recorder.

Which said deed bears the following endorsements, to wit: Oct. 88 18'-73. No. 11. Doc. 4. Deed. Ex. G. F. No. 4. Maria Antonia Aguilar and others to Juan A. Robinson. Dated October 18th, 1873. Exhibit D. Ex. D filed Dec. 22d, 1879. Juan Wasson, U. S. Sur. General. Recorded at the resquetos Juan A. Robinson, Jan. 26, A. D. 1874, at 21 min. past 3 p. m. in liber 729 of deeds, page 48., No. 11 in docket journal, vol. 21, p. 59-62. \$5.50. 10. Ex. D. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed in my office at Santa Fe in 18th October, '92. James H. Reeder, clerk. B. I. L. Chaves, dp'y.

Mr. STEVENSON. Deed from Juan A. Robinson to the Colorado Commercial and Land Company of the land in controversy, dated November 29th, 1873. (Petitioner's Exhibit H.)

#### EXHIBIT H.

Which said exhibit is in the words and figures following, to wit:

This indenture made the twenty-ninth day of November, in the 89 year of our Lord one thousand eight hundred and seventy-three, between Juan A. Robinson, of the city and county of San Francisco, State of California, the party of the first part, and the Colorado Commercial and Land Company, a corporation duly incorporated under the laws of the State of California, the party of the second part.

Witnesseth that the said party of the first part, for and in consideration of the sum of five (5.00) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of other good and valuable considerations unto the said party of the first part moving from the said party of the second part, has bargained, granted, sold, and transferred, and by these presents does bargain, sell, and transfer unto the said party of the second part, and to its successors and assigns forever, all the right, title, and interest of the party of the first part in and to the rancho "Paso de los Algodones," being that certain tract, piece, or parcel of land lying and being and situated in the Territory of Arizona, Yuma County, at the confluence of the rivers Colorado and Gila, opposite Fort Yuma, consisting of five (5) leagues or "sitios" of land, which rancho was ceded and

90 granted to Fernando Rodriguez, deceased, by the Mexican authorities in the year 1838, and by the heirs of said Fernando Rodriguez sold and conveyed to the party of the first part, the boundaries and particular description of said rancho Paso de los Algodones being fully set forth in the original deed of concession from the Mexican authorities to Fernando Rodriguez, which deed of concession or grant was recorded in a book of Spanish land titles, page 93 to 110, inclusive, on the 23rd day of December, 1865, by John H. Archibald, recorder, which book of Spanish land titles is now in the county recorder's office of Pima County, Territory of Arizona.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

91 In witness whereof the said party of the first part has hereto set his hand and seal the day and year first above written.

JUAN A. ROBINSON. [SEAL.]

Signed, sealed, and delivered in the presence of—  
E. V. JOICE.

Attached to said deed is the following certificate, to wit:

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this twenty-ninth day of November, A. D. one thousand eight hundred and seventy-three, before me, E. V. Joice, a commissioner of deeds for the Territory of Arizona in and for said city and county, duly commissioned and sworn, personally appeared the within-named Juan A. Robinson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first mentioned.

[SEAL.]

E. V. JOICE,

*Commissioner of Deeds for the Territory of Arizona.*

92 Across the last page of said deed is written the following, to wit:

Recorded in the office of the county recorder of the city and county of San Francisco January 26th, A. D. 1874, at 22 mins. past 3 p. m., in liber 729 of deeds, page 51.

O. W. FRANK,

*County Recorder.*

(Which said deed bears the following endorsements, to wit: Nov. 29/73. No. 12. Deed. Ex. H. Juan A. Robinson to Colorado Commercial and Land Company. Dated, Nov. 29th, 1873. City and co. of San Francisco. Recorded at the request of Juan A. Robinson Jan. 26, A. D. 1874, at 22 min. past 3 p. m., in liber 729 of deeds, page 51. 21/2. Fi. No. 10. 10. 9.

Recorded March 23rd at 9 a. m., A. D. 1874, on pages 638 and 639, book one of deeds of Yuma County records, at request of Samuel Purdy,



jr., by James Sparrs, county recorder. Exhibit E. No. 12 in docket. Journal, 11 pgs., 62-65. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.

93 Mr. STEVENSON. Offer deed of the same land, dated January 25, 1892, by the Colorado Commercial and Land Company to Elisha M. Sanford. (Petitioner's Exhibit I.)

### EXHIBIT I.

Which said exhibit is in the words and figures following, to wit :

This indenture, made and entered into this 25th day of January, 1892, by and between the Colorado Commercial and Land Company, a corporation, the party of the first part, and Elisha M. Sanford, of Prescott, Arizona, the party of the second part :

Witnesseth that the said party of the first part, for and in consideration of the sum of five hundred (\$500.00) dollars and other good and valuable considerations to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto Elisha M. Sanford, the party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the party of the first part in, to, and upon that certain real property lying and being situate in the county of Yuma, in the Territory of Arizona, and known, bounded, and described as follows, to wit :

94 Section one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-four (24), twenty-three (23), twenty-six (26), thirty-five (35), and thirty-four (34), in township No. ten (10) south, range twenty-five (25) west of the Gil' and Salt River base and meridian ; also section four (4), five (5), six (6), seven (7), eight (8), seventeen (17), eighteen (18), and nineteen (19), the northwest quarter of section three (3) ; the north one-half ( $\frac{1}{2}$ ) and southwest quarter of section (9), the west one-half ( $\frac{1}{2}$ ) of section twenty (20), the north one-half ( $\frac{1}{2}$ ) and southwest one-quarter ( $\frac{1}{4}$ ) of section thirty (30), and northwest one-fourth ( $\frac{1}{4}$ ) of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gil' and Salt River base and meridian ; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one-quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north half ( $\frac{1}{2}$ ) and southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian ; also section six (6) and the northwest quarter of section five (5), and the north half ( $\frac{1}{2}$ ) of the southwest one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian. Sections nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and the northwest quarter and southwest quarter of twenty-eight (28), in township eight (8), south, range twenty-three

(23) west, Gil' and Salt River base and meridian; also sections twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33), in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian. Also that certain tract of land lying north of the San Bernardino base and meridian and west of the village of Yuma, and within the said county of Yuma.

Also commencing at the southwest corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west, thence running south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along the westerly prolongation of the south line of said section to the southeast corner of said section and place of beginning.

The said property and description thereof described and intended 96 to be described is that certain real property known as the Rancho

El Paso de los Algodones grant, granted by the State of Sonora, Republic of Mexico, to Senor Don Fernando Rodriguez by an instrument of writing bearing date April 12th, 1838, and therein described as being five square leagues of land contiguous to the Colorado River, situate in front of the confluence of the same with the Gila River and opposite the point named El Paso de los Algodones, and more particularly described according to the United States survey thereof, on file and of record in the office of the Surveyor-General of the United States, at Tucson, Arizona, and record and survey thereof, as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of said property as if the same were written at length herein. Together with all and singular the telements, heredisaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainders and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances, unto the said party pf the second part and to his heirs and assign' forever.

In witness whereof the said party of the first part, by resolution of its board of directors, hath caused these presents to be subscribed by its president and secretary and its corporate name and seal to be hereunto affixed the day and year first above written.

97 [SEAL.] COLORADO COMMERCIAL AND LAND COMPANY,  
By G. AUDEADE, *President*.

Attest:

W. W. SANDERSON, *Secretary*.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 25th day of January, 1892, before me, Geo. A. Young, a notary public in and for the city and county of San Francisco, State of California, personally appeared G. Audeade, personally known to me to *the* the president of the Colorado Commercial and Land Company, the corpora-

tion described in and that executed the foregoing instrument, and who acknowledged to me that such corporation executed the same freely and voluntarily and for the uses, purposes, and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first before written.

GEO. A. YOUNG,

*Notary Public in and for said City and County.*

(Geo. A. Young, notary public.)

Recorded at request of E. M. Sanford, January 28th, 1892, at 5 o'clock p. m.

J. L. REDONDO,

*County Recorder.*

# TERRITORY OF ARIZONA,

*County of Yuma, ss:*

98 I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of endenture from the Colorado Commercial and Land Company to Elisha M. Sanford, as the same appears of record in my office in Book 7 of Deeds, page #504 et seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: "I—Ex." Filed June 6th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.

Mr. STEVENSON: Deed from E. M. Sanford and Francis L. Sanford, his wife, to the Algodones Land Company, for the same land, dated the first day of February, 1892. (Petitioner's Exhibit J.)

## EXHIBIT J.

Which said exhibit is in the words and figures following, to wit:

99 This deed made the first day of February, in the year 'f our Lord one thousand eight hundred and ninety-two, between Elisha M. Sanford and Francis L. Sanford as his wife, of Prescott, Arizona, the parties of the first part, and the Algodones Land Company, a corporation erected and organized under and by virtue of the laws of the Territory of Arizona, the party of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sale, issuance, transfer, and delivery by said party of the second part to the said Elisha M. Sanford of one million four hundred and ninety-nine thousand five hundred dollars of the full paid-up nonassessable capital stock of said corporation, and for the further consideration of correctly stating the true date of the execution and delivery of a certain deed, bearing date the thirtieth day of January, A. D. 1892, wherein the parties therein were the parties as herein stated, and recorded in the office of the county recorder of the county of Yuma, Territory of Arizona, at page #529 of deed records of said office, so as to recite that the same was exe-

cutted upon and delivered upon its true date, to wit, the first day of February, A. D. 1892, the receipt of which said shares and capital stock is hereby confessed and acknowledged, have remised, released, sold, quit-claimed, and confirmed, and by these presents to sell, remise, release, quit-claim, and confirm unto the said party of the second part, and to its successors and assigns forever, all the right, title, interest, claim, and demand which the said parties of the first part, have in the following-described property situate, lying, and being in the county of Yuma, Territory of Arizona, namely:

100 The Rancho El Paso de los Algodones land grant, more particularly described in a certain deed, bearing date the twenty-fifth (25th) day of January, 1892, wherein the Colorado Commercial and Land Company is grantor and said Elisha M. Sanford is grantee, and recorded in the office of the county recorder of said county of Yuma, at page five hundred and four et seq. of book seven (7) of deeds records of said office, to which said deed, and the record thereof as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the land and property herein conveyed and intended so to be.

Expressly reserving, saving, and excepting from this conveyance so much and more of said property as was heretofore conveyed by the said parties of the first part to Abe Frank, as mayor of the village of Yuma, in trust for the use and benefit of the occupants of the townsite of Yuma, by deed bearing date the thirtieth day of January, A. D. 1892, and recorded in the office of the county recorder of said county on the 23rd day of February, 1892, at page five hundred twenty-five (525) of book seven (7) of deeds records of said county.

To which said last-mentioned deed, and the record thereof as last aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the property reserved and excepted from this  
101 conveyance, as if said deed last aforesaid mentioned, or the record last aforesaid mentioned, was herein written at length.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of said parties of the first part, either in law or equity, including all right of dower of the said Francis L. Sanford, wife as aforesaid to the only proper use, benefit, and behalf of the said party of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ELISHA M. SANFORD. [SEAL.]  
FRANCIS L. SANFORD. [SEAL.]

TERRITORY OF ARIZONA,  
County of Yuma, ss:

Before me, Charles H. Brinley, a clerk of the district court of the third judicial district of the Territory of Arizona, in and for the county of Yuma, on this day personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and

102 consideration therein expressed; also on the same day personally appeared Francis L. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Francis L. Sanford, acknowledged said instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract the same.

Given under my hand and seal of office this twenty-fourth day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,

*Clerk of the District Court aforesaid.*

Recorded at the request of J. H. Carpenter, March 7th, 1892, at 15 minutes past 2 o'clock p. m.

J. L. REDONDO,

*County Recorder.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of deed from Elisha M. Sanford and Francis L. Sanford to the Algodones Land Company, as the same appears of record in my office in book 8 of deeds, page 545 et s'q.

103 Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements, to wit: Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Ex. J. Re filed Oct. 18, '92. James H. Reeder, clerk; I. L. Chaves, deputy clerk.

Mr. STEVENSON. Deed dated 21st of September, 1892, by the Algodones Land Company to Earl Coe, to the same land. Petitioner's Exhibit K.

#### EXHIBIT K.

Which said exhibit is in the words and figures following, to wit:

This indenture, made this twenty-first day of September, A. D. 1892, between Algodones Land Company, a corporation created, organized, and existing under and by virtue of the laws of the Territory of Arizona, the party of the first part, and Earl B. Coe, of Denver, State of Colorado, the party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar and of other  
104 good and valuable considerations to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, demand, and posses-

sion of the said party of the first part of, in, and to those certain lands and premises situate, lying, and being in the county of Yuma, Territory of Arizona, known, named, and described as follows, to wit: The Rancho El Paso de los Algodones Mexican land grant, more particularly described in a certain deed bearing date the twenty-fifth day of January, A. D. 1892, wherein the Colorado Commercial and Land Company is grantor and Elisha M. Sanford is grantee, and recorded at page five hundred and four (504) of book seven (7) of deed records in the office of the county recorder of the county of Yuma aforesaid, to which said deed, and record thereof as aforesaid, reference is hereby hereunto had and made for a more certain and definite description of the property herein conveyed and intended so to be conveyed, as if the said deed, or the record thereof as aforesaid, were herein written at length.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

105 To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has caused its corporate name to be hereunto affixed and its corporate seal to be hereunto attached by its president and secretary, and done at office the day and year first above written.

ALGODONES LAND COMPANY,  
By ELISHA M. SANFORD, *President.*

[SEAL.]

Attest:

J. H. CARPENTER,  
*Secretary.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss:*

Before me, Charles H. Brinley, as clerk of the district court of the third judicial district, sitting in and for said county of Yuma, on the day personally appeared Elisha M. Sanford, known to me to be the president of the Algodones Land Company, and the person whose name is subscribed to the foregoing instrument, *a* and acknowledged to me that he executed the same for the purpose *ad* and consideration therein expressed.

Given under my hand and seal of office, at office, this the twenty-first day of September, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk District Court, 3rd Jud. Dist. Arizona,*  
*in and for Yuma County.*

106 Recorded at the request of J. H. Carpenter September 24th, 1892,  
at 11 o'clock a. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing *id* a true and cor-



rect copy of a deed from the Algoones Land Company to Earl B. Coe, as the same appears of record in my office in book (8) eight of deeds, at page # 90 et seq. records of Yuma County, A. T.

Witness my hand and seal of office this 25th day of November, A. D. 1892.

[SEAL.]

J. L. REDONDO,  
County Recorder, Yuma County, A. T.

Which said deed bears the following endorsements: F. No. 21. Certified copy deed. Algodones Land Company to Earl B. Coe. Dated Sept. 21st, 1892. Ex. K. Filed Oct. 18, 1892.

107 James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON: Now offer in evidence a certified and authenticated copy of a patent issued by the Government of the United States to A. J. Finley, as mayor to the town of Yuma, for the benefit of the inhabitants of the town, to certain of the lands granted to Rodriguez. Petitioner's Exhibit L.

#### EXHIBIT L.

Which said exhibit is in the words and figures following, to wit :

The United States of America. Certificate No. 63.

*To all to whom these presents shall come, greeting :*

Whereas, A. J. Finley, mayor of the town of Yuma, Yuma County, Arizona Territory, in trust for the several use and benefit of the inhabitants of the town of Yuma, in said county and Territory, according to their respective interest, by virtue of the act of March 2nd, 1867, entitled an act for the relief of the inhabitants of cities and towns upon the public lands," has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Florence, Arizona Territory, whereby it appears that full payment has been made by the said

108 A. J. Finley, mayor as aforesaid, in trust as aforesaid, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for fractional section twenty-six, the lots numbered one, two, and three, of section thirty-five, the lots numbered one, two, three, and four, of section twenty-seven, in township sixteen south, of range twenty-two, East San Bernardino meridian, and the fractional section twenty-one. The lots numbered four, five, six, eight, and nine, and the southwest quarter of section twenty-two, in township eight south, of range twenty-three west, Gila and Sal River meridian, in the district of land subject to sale at Florence, Arizona Territory, containing one thousand two hundred and eight acres and thirty-seven hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tracts have been purchased by the said A. J. Finley, mayor, as aforesaid, in trust, as aforesaid.

Now, know ye: That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such cases made and provided, have given and granted, and by these presents do give and grant, unto the said A. J. Finley, mayor, as aforesaid, in trust as aforesaid, and to his successors, the said tract above described.

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said A. J. Finley, mayor, as aforesaid, in trust as aforesaid, and to his successors and assigns in trust as aforesaid.

No title shall be hereby acquired to any mine of gold, silver, can' aber, or copper, or to any valid mining claim or possession held under existing laws of Congress. This patent shall not affect any valid adverse right to said lands or any part thereof, if such exists under any Spanish or Mexican grant, which may hereafter be confirmed pursuant to act of Congress, and to and assigns in trust as aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

[U. S. A. L. S. L. O.]

Given under my hand at the city of Washington, the second day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

By the President :

U. S. GRANT.

By D. D. COUD,

*Secretary.*

L. K. Lippencott, recorder of the General Land Office, recorded this 6th day of June A. D. 1876, at 9 o'clock a. m., at request of A. J. Finley.

110

O. F. TOWNSEND,  
*County Recorder.*

Miscellaneous Records, vol. 5, pages 72 & 73.

TERRITORY OF ARIZONA,  
*County of Yuma, ss :*

I, J. L. Redondo, county recorder, in and for Yuma County, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of patent from the United States of village of Yuma as the same appears of record in my office in book 2 of deeds, page #66 et. seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: F. No. 6. Ex. L. Patent from United States to A. J. Finley, mayor town of Yuma. Dated August 2nd, 1875. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Re filed Oct. 18, 1892. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

111 Mr. STEVENSON. Deed dated 30th of January, 1892, made by E. M. Sanford and Francis L. Sanford, his wife, to the incorporated authorities of the town of Yuma. (Petitioner's Exhibit M.)

## EXHIBIT M.

Which said exhibit is in the words and figures following, to wit:

This deed, made this thirtieth day of January, A. D. 1892, between Elisha M. Sanford and Francis L. Sanford, as his wife, of Prescott, Arizona, the parties of the first part, and Abe Frank, as the mayor of the village of Yuma, county of Yuma, Territory of Arizona, and his successors in office, as trustee, in trust for the use and benefit of the occupants of the town site of Yuma, the party of the second part.

Witnesseth: That the said parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States, to the said parties of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and confessed, have remised, released, sold, quitclaimed, and confirmed, and by these presents do remise, release, sell, quitclaim, and confirm unto the said party of the second part, as such trustee, and in trust as aforesaid, and to his successors in trust, and assigns forever, all the right, title, interest, claim, and

112 demand which the said parties of the first part have in and to the following described property, situate in the village of Yuma, aforesaid, to wit:

All that certain tract of land lying wholly within the boundaries of said town site as set forth and described in a certain indenture of patent issued by and on behalf of the United States of America, under and by virtue of the laws of Congress relating to town-site entries, to the mayor of said village in trust for the use and benefit of the occupants of said town site. Which said patent is on file and of record in the office of the county recorder of said county of Yuma, to which said patent and the record thereof as aforesaid reference is hereby thereunto had and made for a more definite and certain description of the property herein intended to be conveyed, nevertheless the grantors herein expressly save, reserve, and except from the conveyance so much and more of the said embraced within said town site as was before the date of said patent set apart and pretended to be reserved by the Government of the United States for its own use.

And further saving, reserving, and excepting from this conveyance those certain other lands bounded and described as follows: A strip of land used and occupied by the Yuma Pumping Irrigation Company for its right of way and station grounds, for its pumping station and canal, and being one hundred (100) feet wide along the river front and twenty-five (25) feet wide on either side of the center of the canal as now constructed, together with strips of land fifteen (15) feet wide extending from said main ditch along the pretended streets and alleys of said town site under and below said canal.

And further saving, reserving, and excepting from this conveyance a certain other strip of land, covering all that certain ground lying on the Colorado River front between the reservoir site of the Southern Pacific Company and the right of way and station grounds of the Yuma Pump-

ing Irrigation Company, thence in a southerly direction until the same passes out of and beyond the boundaries of said town site, and being four hundred (400) feet wide after the same passes beyond the said reservoir site and station grounds.

To have and to hold the same, together with all and singular the appurtenances and preveleges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or in equity, as well as all dower rights at law or in expectancy, of the said Francis L. Sanford, wife as aforesaid, to the said party of the second part, his successors in office, and assigns forever.

In witness whereof the said parties of the first part have hereunto set thier hands and seals the day and year first above written.

114

ELISHA M. SANFORD. [SEAL.]  
FRANCIS L. SANFORD. [SEAL.]

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

Before me, Charles H. Brinley, a clerk of the district court in and for said county and Territory, personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 23rd day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk of the District Court in and for the County of Yuma,  
Territory of Arizona.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

Before me, Charles H. Brinley, a clerk of the district court in and for said county and Territory of Arizona, on this day personally appeared Francis L. Sanford, wife of Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and  
115 having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Francis L. Sanford, acknowledged said instrument to be her act and deed and declared that she had willingly signed the same, for the purposes and consideration therein expressed, and that she did not wish to retract the same.

Given under my hand and seal of office this 23rd day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk District Court, Yuma County, Arizona.*

Recorded at request of A. Frank, February 23d, 1892, at 1 p. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and cor-

rect copy of deed from Elisha M. Sanford and Francis L. Sanford to the village of Yuma, as the same appears of record in my office in book 7 of deeds, page #525 et. seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

116 Which said deed bears the following endorsemen's: 21. Filed June 6th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Ex. M. Refiled Oct. 18, '92. James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON. Deed dated on 30th of January, 1892, by E. M. Sanford and Francis L. Sanford, his wife, to the Algodones Land Company for the land involved in this action; made for the purpose of correcting former deed. (Petitioners' Exhibit N.)

#### EXHIBIT N.

Which said exhibit is in the words and figures following, to wit:

This deed, made 'his thirtieth day of January, in the year of our Lord one thousand eight hundred and ninety-two, between Elisha M. Sanford and Francis L. Sanford, as his wife, of Prescott, Arizona, the parties of the first part, and the Algodones Land Company, erected and organized under and by virtue of the laws of the Territory of Arizona, the party of the second part,

117 Witnesseth: That the said parties of the first part, for and in consideration of the sale, issuance, transfer, and delivery by the said party of the second part to the said Elisha M. Sanford of all and every of the shares of full paid up nonassessable shares of the second part, excepting five (5) shares thereof, the receipt whereof is hereby confessed and acknowledged, have remised, released, sold, quitclaimed, and confirmed, and by these presents does sell, remise, release, quitclaim, and confirm unto the said party of the second part and to its successors and assigns forever all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following described property, situate, lying, and being in the county of Yuma, Territory of Arizona, namely, the Rancho El Paso de los Algodones land grant, more particularly described in a certain deed bearing date the twenty-fifth (25th) day of January, 1892, wherein the Colorado Commercial and Land Company is grantor and said Elisha M. Sanford is grantee, now of record in the office of the county recorder of the county of Yuma, in the Territory of Arizona, to which deed and the record thereof, as aforesaid, reference is hereby hereunto had and made for a more certain and definite description of the land and property herein conveyed, and intended so to be, as if the said deed or record thereof as aforesaid were herein written at length, expressly excepting, saving, and reserving from this conveyance so much and no more of said Rancho El Paso de los Algodones as

lies wholly within the boundaries of that tract of land  
118 bounded and described in a certain town-site patent from the United States of America to the mayor of the village of Yuma, in said county of Yuma, in trust for the use and benefit of the occupants thereof, to wit: Of said town site and not included within any purported reservation of the United States aforesaid for its use; which said patent is

recorded in the office of the county recorder, and to which said patent and the record thereof, as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the property reserved from this conveyance, and intended so to be, as if said patent or the record thereof, as aforesaid, was herein written at length, and which said property so reserved, excepted, and saved from this conveyance, as aforesaid, was heretofore on this day conveyed by the grantors herein to the mayor of the village of Yuma, aforesaid, and successors in trust for the use and benefit of the occupants of said town site.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, including all right of dower of the said Francis L. Sanford, as such wife, either in law or equity, to the only proper use, benefit, and behalf of the said party of the second part, its successors and assigns forever.

119 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ELISHA M. SANFORD. [SEAL.]

FRANCIS L. SANFORD. [SEAL.]

#### STATE OF COLORADO,

##### *County of Arapahoe ss:*

Before me, Samuel L. Carpenter, a notary public in and for said county and State, on this day personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this first day of February, A. D. 1892.

[SEAL.]

SAMUEL L. CARPENTER,

*Notary Public in and for the County of Arapahoe, State of Colorado.*

#### TERRITORY OF ARIZONA, *County of Yuma, ss:*

Before me, C. H. Brinley, clerk of the district court in and for said county and Territory, on this day personally appeared Francis L. Sanford, wife of Elisha M. Sanford, known to me to be the person whose

120 name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Francis L. Sanford, acknowledged said instrument to be her act and deed, and declared that she willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract the same.

Given under my hand and seal of office this the twenty-third day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,

*Clerk District Court in and for the County of Yuma,  
Territory of Arizona.*

Recorded at the request of E. M. Sanford, February 23rd, 1892, at 2 p. m.

J. L. REDONDO,  
*County Recorder.*



## TERRITORY OF ARIZONA,

*County of Yuma, ss :*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of the deed from Elisha M. Sanford and Francis L. Sanford to the Algodones Land Company, as the same appears of record in my office in book 7 of deeds, page #529 et seq.

121 Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: 2. Filed June 6, 1892. James H. Reeder, clerk. By Thos. B. Baldwin, deputy clerk. Ex. N. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Mr. STEVENSON. Offer deed dated 7th of June, 1892, made by the Algodones Land Company to Earl B. Coe, for the grant involved in this case. (Petitioner's Exhibit O.)

## EXHIBIT O.

Which said exhibit is in the words and figures following, to wit:

122 This deed made this seventh day of June, in the year of our Lord one thousand eight hundred and ninety-two, between the Algodones Land Company, a corporation existing under and by virtue of the laws of the Territory of Arizona, of the first part, and Earl B. Coe, of the county of Arapahoe and State of Colorado, of the second part,

Witnesseth, that the said party of the first part for and on consideration of the sum of ten thousand dollars, and other good and valuable consideration to the said party of the first part in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirmed unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land situate and being in the county of Yuma, and Territory of Arizona, to wit: Sections twenty (22), twenty-three (23), twenty-four (24) in township eight (8) south, range twenty-four (24) west, and so much of sections twenty-one (21), twenty-eight (28), and thirty-three (33) as lies east of the Colorado River, and within the Territory of Arizona, all in township eight (8) south, range twenty-four (24) west; all of sections twenty-nine (29) and thirty-two (32) and the west half of section twenty-eight (28), all in township eight (8) south, range twenty-three (23) west. The northwest quarter of section five (5) and the southwest quarter of section seven (7) in township nine south, range twenty-three

123 (23) west; all of sections eleven (11), ten (10), nine (9), eight (8), seventeen (17), sixteen (16), fifteen (15), fourteen (14), thirteen (13).

The northwest quarter ( $\frac{1}{4}$ ) of section twenty-four (24); all sections twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), twenty-nine (29), twenty-eight (28), twenty-seven (27). The north half ( $\frac{1}{2}$ ) and the south-

west quarter ( $\frac{1}{4}$ ) of section twenty-six (26). All of sections thirty-four (34), thirty-three (33), thirty-two (32), thirty-one (31), all in township nine (9) south of range twenty-four (24) west; also so much of sections five (5) and thirty in township nine (9) south, of range twenty-four (24) west as lies east of the Colorado River and within the Territory of Arizona; also so much of sections thirty-five (35) and thirty-six (36) in township nine (9) south, range twenty-five (25) west as lies east of the Colorado River and within the Territory of Arizona. All of sections six (6), five (5), four (4), the northwest quarter of section three (3), the north half ( $\frac{1}{2}$ ) and the southwest quarter of section nine (9) and of sections eight (8), seven (7), eighteen (18), seventeen (17), nineteen (19), thirty (30), and thirty-one (31), the west half of twenty (20), all in township ten (10) south, range twenty-four (24) west. All of sections thirty-six (36), thirty-five (35), twenty-five (25), twenty-four (24), twenty-three (23), and thirteen (13), in township ten (10) south of range twenty-five (25) west; also so much of sections two (2), one (1), twelve (12), fourteen (14), fifteen (15), twenty-two (22), twenty-six (26), twenty-seven (27), 124 and thirty-four (34), all in township ten (10) south, range twenty-five (25) west, as lie east of the Colorado River and within the Territory of Arizona; also commencing at the southeast corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west; thence along south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the said main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along a westerly prolongation of the south line of said section and place of beginning. Also all fractional sections and tracts of land not herein especially enumerated, fronting upon and lying along the left or eastern bank of the Colorado River between boundary line of the United States and the Republic of Mexico, at the confluence of the Gila and Colorado rivers, and being west of the Gila and Salt river base and meridian.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appurtenant and the reversion and reversions, remainder and remainder, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances unto the said party of the second part, his heirs and assigns forever.

125 And the said Algodone's Land Company, party of the first part, for itself, its successors and assigns, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealing and delivery of these presents it is well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in the manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, leins, taxes, assessments, and incumbrances of whatever kind or nature soever, and the above-bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against all and every

person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and defend.

In witness whereof, the said party of the first part has caused its name to be by its president signed to these presents and its corporate seal attached to the same the day and year above written.

[SEAL.]

ALGODONES LAND COMPANY,  
By EDWARD L. FREEMAN, [SEAL.]  
*Its President.*

Attest :

J. H. CARPENTER,  
*Secretary.*

126 STATE OF COLORADO,  
*Arapahoe County, ss :*

Edward L. Freeman appeared before me this fourth day of August, 1892, in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein, and said Edward L. Freeman, personally known to me, and known to me to be the president of the Algodones Land Company, and he acknowledged the foregoing instrument to be the free and voluntary act of said company for the uses specified therein.

Witness my hand and official seal. My commission expires June 15th, 1896.

[SEAL.]

WILL. M. DESCH,  
*Notary Public in and for said County.*

Recorded at the request of J. H. Carpenter, September 22nd, 1892, at 4 o'clock p. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss :*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of a deed from the Algodones Land Company to Earl B.

127 Coe, as the same appears of record in my office in book # 8 of deeds, at page # 85 et seq., records of Yuma County, A. T.

Witness my hand and seal of office this 25th day of November, A. D. 1892.

[SEAL.]

J. L. REDONDO,  
*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements : Certified copy deed. Algodones Land Company to Earl B. Coe. Dated June 7th, 1892. Ex. O. Filed Oct. 18, '92. James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON. I offer in evidence the deposition of Juan A. Robinson, taken before Theodore Wagner, United States surveyor-general for California, on the 7th of April, 1880, and filed in the office of the surveyor-general of the Territory of Arizona, heretofore, to wit, on the 12th day of April, 1880. It is offered now for the reason that the person who gave this testimony is now dead. (Petitioner's Exhibit P.)

## EXHIBIT P.

128 Which said exhibit is in the words and figures following, to wit :  
Attached to and properly a part of said exhibit is the following communication, to wit :

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., March 4th, 1880.*

JOHN WASSON, Esq.,  
*U. S. Surveyor-General, Tucson, Arizona :*

SIR : At the instance of L. Aldrich, esq., of San Francisco, California, as attorney for claimants in the matter of "Paso de los Algodones," private land claim in Arizona, you addressed a letter to this office on 9th of December last, in which you desire instructions upon the following questions, arising in the adjudication by you of the title to said claim, viz :

"Is it proper for me to permit the examination of witnesses in private land claims to take place out of this office, and out of the presence of myself or a sworn officer of this office, and then receive and act upon such testimony ?

"2. If yes, then under what conditions and before whom may such testimony be taken ?"

129 In reply, you are informed that while the law makes it your duty to take the testimony in all private land claims in the Territory of Arizona, adjudicated by you, it was not contemplated that you should travel to all parts of the country for that purpose. By the authority given you to summons witnesses, it was undoubtedly intended that they should be brought to your office to give their testimony. In the case, however, which has been especially brought to the notice of this office, where it is essential to have the testimony of a person residing in California, who is old and infirm, and therefore incapacitated to make the journey to Tucson, I think that it would be permissible to have the testimony of such person taken before the surveyor-general of California.

It is suggested that the attorneys should first present to you, in writing, all the questions which they propose to ask the witness, and you can then determine upon such questions as you may deem necessary to submit on cross-examination, and they should also be reduced to writing, after which the interrogatories and cross-interrogatories may be sent to the surveyor-general of California, who will take the testimony.

He should also be authorized to ask such questions as he may think proper to determine the truth or falsity of the statements of the witness, and after the examination is concluded, the testimony should be properly certified, inclosed under seal, and transmitted to you.

Respectfully,

130

J. M. ARMSTRONG,  
*Acting Commissioner.*

Which said communication bears the following endorsements :  
A true copy.

JOHN WASSON,  
*U. S. Surveyor-Gen'l for Arizona.*

Which said Exhibit P is as follows :

Before the surveyor-general of the United States for the Territory of Arizona, in the matter of the petition of the Colorado Commercial and Land Company for a survey of and confirmation of title to the tract of land in the Territory of Arizona known as the Rancho El Paso de los Algodones, granted to Fernando Rodriguez by the Government of the Republic of Mexico, on or about the 12th day of April, 1838, and the title to which has passed by due mesne conveyances to petitioner, San Francisco, March 30, 1880.

*Deposition of Juan A. Robinson, taken before Surveyor-General T. Wagner.*

**The SURVEYOR-GENERAL :**

Interrogatory 1st. What is your name, age, residence, and occupation ?

Ans. My name is Juan A. Robinson ; age, 78 years ; my business  
131 is that of a general agent ; I reside in San Francisco.

Interrogatory 2nd. Did you ever reside in the Republic of Mexico ? If yes, where, in what State, and how long ?

Ans. I resided in the Republic of Mexico, in the State of Sonora, for 40 years continuously, up to 1861 and from 1861, occasionally, to 1869.

Interrogatory 3rd. If you answer the last interrogatory in the affirmative as to your residence in said Republic, state if at any time during your residence there you occupied any official position there, what said position was, and how long you occupied it.

Ans. I held the office of U. S. consul for the Port of Guaymas for over ten years under commission from President Tyler and President Polk.

Ques. Can you particularize during what years you held that position ?

Ans. I can particularize by reference. I do not remember just now. My appointment under President Tyler is dated September, 1842, and under President Polk, July, 1848 ; I continued in the office 1848, 1849, until the year 1850 or 1851, when I was relieved by Consul Roman.

Interrogatory 4th. Have you read the petition which has been filed in the office of the surveyor-general of the United States for the  
132 Territory of Arizona for the confirmation of and the issuing of a patent to said company for a grant made to one Fernando Rodriguez for a tract of land in said territory known as the Rancho El Paso de los Algodones, a printed copy of which is now shown you, and hereto annexed, marked Exhibit A ? [Which said Exhibit A will follow this deposition.—Clerk.] If yes, state if you knew Fernando Rodriguez therein mentioned.

Ans. I have read the petition referred to in this interrogatory. I was personally acquainted with Fernando Rodriguez referred to in said petition. I knew him from the year 1853 until his death.

Ques. He was the same person mentioned in this petition, was he not ?

A. Yes.

Interrogatory 5th. If you knew said Rodriguez, state when and how long you knew him. State also if you knew anything of a grant to him by the Mexican Government on or about the 12th of April, 1838, or at any other time, of a tract of land in the State of Sonora, in Mexico, now in the Territory of Arizona.

Ans. I knew Fernando Rodriguez in Hermosillo, in Sonora, and in the port of Guaymas. I knew him since the year 1853 until his death. I was aware of his application to the Sonora authorities in the early part of 1838 for the purpose of a tract of land on the margin of the Colorado River, and at that date being in the State of Sonora, Mexico, but now in the Territory of Arizona.

133 Ques. And that was on or about the 12th or 13th day of April, 1838?

Ans. Early in 1838.

Interrogatory 6th. What were your relations with said Rodriguez—intimate, friendly, or otherwise?

Ans. My relations with Fernando Rodriguez were of the most intimate and friendly nature.

Interrogatory 7th. Is said Rodriguez alive at present; if not, when did he die?

Ans. Mr. Fernando Rodriguez is not alive; he died, I think, about the year 1865. I could not say the exact date at this moment.

Ques. Where did he die?

Ans. He died in Hermosillo.

Interrogatory 8th. Describe generally the land granted to him, above mentioned, by name and location.

Ans. The land purchased by Fernando Rodriguez from the authorities of Sonora, in the early part of 1838, is situated at the junction of the Gila River with the Colorado River. It has the figure of a large horseshoe, the river Colorado serving as a boundary on the northern, western, and southern sides, vacant lands of Arizona Territory lying to the east, and is known as the El Paso de los Algodones, the name taken from that of an old ford over the the Colorado River at the southeastern extremity of the measurement of the property.

134 Ques. Can you give about the extent of the property—how much land there was at the same time?

Ans. I know it was made for five leagues.

Ques. Five square leagues?

Ans. Yes; what they call sitios in Spanish.

Interrogatory 9th. Did you purchase the land so granted from Rodriguez? If so, when?

Ans. Fernando Rodriguez sold me the Ranch Paso de los Algodones in exchange for dry goods from my commercial house in Guaymas in 1847, he at that time living at Hermosillo and I in the Port of Guaymas; and having every confidence in his integrity, I did not exact from him the execution of the deed in my favor at that time.

Interrogatory 10th. Did you ever receive any deed or conveyance of said land from Rodriguez? If not, why?

Ans. As I said in my foregoing answer, Fernando Rodriguez did not execute a deed, for the reasons therein mentioned.

Interrogatory 11th. Do you know who, on the 18th day of October, 1873, were the sole heirs and successors of the said Rodriguez to the title of said land? If so, state their names; and if any were married, the name or names of the husband or wife of each, and particularly your means of knowledge on this subject.



Ans. Subsequent to the decease of Fernando Rodriguez I called  
 135 on his heirs to arrange his account, and to give me a deed for the  
 Paso de los Algodones, which they consented to do and did execute  
 said deed on the 18th of October, 1873, said deed being signed by  
 his widow, Maria Antonio Aguila de Rodriguez; his three sons, Fernando  
 Rodriguez, Joaquin Rodriguez, and Francisco Rodriguez; and his four  
 daughters, M. Antonia Rodriguez, Adilaida Rodriguez and her husband  
 Carlos E. Hale; Carmen Rodriguez and her husband, Wincleslan Yberri;  
 and Amalia Rodriguez and her husband, Juan P. Moller. I knew personally  
 the widow and her children, as I also do the husbands of the married  
 daughters, Mr. Hale being an American citizen, Mr. Yberri a Mexican  
 gentleman, and Mr. Moller a German gentleman—Mr. Yberri and  
 Mr. Moller residing in Guaymas and Mr. Hale in Hermosillo, where I  
 often met him, as well as at Guaymas, where he came frequently on business.  
 I was intimately acquainted with the whole of them.

Ques. That was your means of knowing? You were intimate? You  
 had occasion to know for the reason that you wanted to straighten this  
 matter out?

Ans. Yes.

Interrogatory 12th. If you say that you purchased said land from  
 Rodriguez, state if he handed over to you, or put into your possession at  
 the time, what he represented to be the original grant and accompanying  
 papers which he received from the Mexican Government for said land.

If so, what did he represent them to be?

136 Ans. Fernando Rodriguez handed me the "Expediente" or original  
 title deed obtained from the Sonora authorities at the time  
 of selling me the property, and I held said document and other important  
 papers until I disposed of the property El Paso de los Algodones to the  
 Colorado Commercial and Land Company in 1874. Fernando Rodriguez  
 assured me that the original papers were gotten up in due conformity with  
 the Mexican laws, and that they were full titles and covered in every  
 respect the Ranch El Paso de los Algodones.

Interrogatory 13th. How long have you had said papers, and what, if  
 any, disposition has been made of them?

Ans. I received the original documents "Expediente Original" from  
 Fernando Rodriguez in 1847, remaining in my possession and power until  
 1874, when I delivered them to the Colorado Commercial and Land Company  
 with the deed which I gave that company for the property.

Interrogatory 14th. Did you ever go into possession, occupy, or cultivate  
 said land? If so, state what you did in that respect and when said  
 possession, occupation, and cultivation occurred; and if you did not, state  
 why.

Ans. On account of the danger arising from the barbarous Apache  
 Indians, I found it quite impossible to take possession of the property,  
 although I made liberal inducements to different parties to go there,  
 137 and only succeeded by offering handsome compensation to the settlers  
 who supplied the United States military stations in Arizona  
 and southern California to locate their establishments on the property,  
 and by that means a nucleus was formed for the present town of Yuma,  
 which has been gradually increasing to the present date. I never went  
 into possession. The settlers took possession in my stead.

Ques. You only went into possession by some settlers whom you procured to put on improvements?

Ans. I made it a consideration for them to go there. I gave them a part of the property. I would rather not say any more than I know they went there and held the property.

Ques. When did possession, occupation, and cultivation occur?

Ans. I am aware that Fernando Rodriguez made several attempts to occupy the Ranch El Paso de los Algodones before selling the property to me, sending bodies of vagueros well armed, but they were invariably driven back. He had collected a quantity of horned cattle, horses, and mares, hoping to establish a cattle-breeding ranch on El Paso de los Algodones, but had to abandon these attempts for reason of the hostile Indians. I took possession of these lands soon after the Gadsden purchase, and soon after troops were sent there, and held them up to the time I sold to the Colorado Commercial and Land Company. The very moment that the troops went there, then these settlers took possession in my name and have remained there since.

138 Ques. When did this occupation or cultivation occur; about what time?

Ans. Shortly after the Gadsden purchase. I don't remember the date. It was in 1854.

Interrogatory 15th. State any other matter or thing you may know of interest or benefit to either party in this case or which may tend to throw any light on the merits of the petition therein, as fully as though you had been particularly interrogated thereto?

Ques. I know of nothing further.

Cross-interrogatories, to be propounded to Juan A. Robinson, a resident of the city and county of San Francisco, in the State of California, on behalf of said petitioner.

1st. Cross-interrogatory. State, if you know, the condition of the country in the neighborhood of the junction of the Colorado and Gila rivers, about the 12th of April, 1838, with relation to hostile Indian tribes. Was its condition such as to permit its occupation by the agriculturist or grazier?

Ans. The country on which it located El Paso de los Algodones was considered, at the time Fernando Rodriguez made the purchase from the Mexican authorities in Sonora, of great importance on account of its geographical position, the junction with the River Gila being at that time considered the head of navigation from the Gulf of California,

139 and the probability of that place becoming a central point for the export of the ore and metal of the mines in that vicinity, which in those days were reported as fabulously rich, and as a grazing and cattle-raising ranch it had many advantages. The greater part of the grant being surrounded by the Colorado River, facilitated greatly the herding of the cattle, thus obviating the employment of a great number of "vagneros" (herdsmen) in the care of the cattle; for grazing the grass was abundant and nutritious, more particularly the grama grass, which, having heavy roots, was less affected by the drought and want of rain than other classes. The bean of the mesquite, of which the cattle are very fond, is most abundant in the dry seasons, and the beeves fatten readily on them. On the margin of the river the bottom land is very rich and appropriate for

the raising of sugar cane, tobacco, and cotton, and other semitropical plants. Indian corn, beans, and pumpkins can be grown to great advantage, whereas a part of the bottom land, which is annually overflowed, produces hemp spontaneously, each year producing a crop without planting anew. The hostile Indians, at the time the grant was made to Fernando Rodriguez, were constantly on the warpath, and Yumas and the Apaches making it quite impossible for white people, except with a heavy escort of troops, to remain for any time in that vicinity. Various attempts were made by the proprietors, but they were invariably driven back, and several times with the loss of life.

2nd. Cross-interrogatory. What were the circumstances of Fernando Rodriguez, the grantee of "El Paso de los Algodones," in 140 April, 1838, and had he sufficient means at that time to improve and stock a large tract of vacant lands of the country?

Ans. In April, 1838, Fernando Rodriguez was considered a man of large means, who, independent of a large dry-goods store which he kept at Hermosillo, had a cattle ranch a short distance from that city and was also interested in mining pursuits, and was always looked upon as a man well to do.

Ques. And he had stock enough?

Ans. Yes; he was considered very rich. He had a dry-goods store and a stock ranch also, and was interested in mining and was looked on as a man in excellent circumstances.

3rd. Cross-interrogatory. Do you know if Fernando Rodriguez was the owner, by grant of the government, of any other lands within the State of Sonora at the time he obtained the grant of "El Paso de los Algodones?" If yea, please state if you know what lands they were and where located.

Ans. I am not aware that Fernando Rodriguez was the owner of any other grant of land from the government of the State of Sonora at the time he obtained the grant of "El Paso de los Algodones." I don't think he had any other grant.

4th. Cross-interrogatory. Do you know if the grantee, Rodriguez, ever held or attempted to hold any actual possession and useful occupation of the land embraced within the grant of "El Paso de los 141 Algodones?" If yea, give, if you can, the date of such actual or attempted occupation.

Ans. Previous to 1847 Fernando Rodriguez told me that he had fitted out and equipped several bodies of rancheros and vaqueros and dispatched them, well provisioned, for "El Paso de los Algodones," but that neither party ever reached his ranch Paso de los Algodones. They all returned, stating that they had, before reaching the ranch, met large bodies of savages, and that they were afraid to proceed, and much less remain, at the ranch Paso de los Algodones unless they were protected by a sufficient force of regular troops. That was in 1847. It was previous to that time that he made this declaration to me.

Ques. Have you any interest now in this land?

Ans. I have no interest in the property except I hold stock in the company.

Mr. ALDRICH. The company is the petitioner here?

Ans. Yes; I hold stock in the company.

The SURVEYOR-GENERAL. You hold stock in the company that now owns this grant?

Ans. Yes, that now owns this property.

Ques. You are still an interested party in the matter?

Ans. That far I am an interested party.

Ques. Can you tell about what the consideration was which you paid for this land?

142 Ans. I said in the first place I had a dry-goods store and had a wholesale importing store in Guaymas. We had our arrangements. He was anxious to sell me this property and I took it from him, but he never gave me a deed, because I had confidence in him and never thought of it. I never cared about getting a deed; I had the original papers in my hand.

Ques. Do you know about the price that you paid for it?

Ans. About three thousand dollars.

Ques. And he merely delivered to you the original papers and you did not take any deed from him, and after he died you sought out the heirs and obtained this conveyance?

Ans. They were acquainted with this business that I had. We were very intimate at his house and with his family. They knew everything that was going on. After Rodriguez' death I told them I would like to have it cleared up, and they arranged it and gave me the deed as his heirs. They knew it was just the same thing and they did it.

Ques. And this grant covers the present site of the town of Yuma?

Ans. Yes.

Ques. Does it cover also the military reservation there?

Ans. It does not.

Ques. It does not?

Ans. I do not know but what there has always been a question of part  
143 of the reservation, not Fort Yuma, but on the other side of the river. There is a small piece of land there where the troops had barracks. There was a great deal of correspondence about that. Whether the Government holds on to that or not will be decided by the Government.

Ques. I only want to get at what you originally claimed?

Ans. We claimed the whole; but the Government made use of this piece of property. We claim it is ours.

JUAN A. ROBINSON. [RUBRIC.]

Subscribed and sworn to before me this 30th day of March, A. D. 1880.

[SEAL.]

THEO. REICHERT,

U. S. Commissioner.

Att'ched to said deposition is the following certificate, to wit:

Office of the surveyor-general of the United States for the State of California.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

This is to certify that I, Theodore Wagner, surveyor-general of the United States for the State of California, by virtue of the letter of instructions from the Commissioner of the General Land Office of the United

144 States, addressed to the surveyor-general of the United States for the Territory of Arizona, a copy of which has been forwarded by him to me, and is hereto annexed, marked Exhibit B—[which said Exhibit B is so marked and copied in this transcript, at the beginning of and as a part of this Exhibit P, to wit, the deposition of Juan A. Robinson, clerk]—did cause the witness, Juan A. Robinson, to appear before me for examination in the matter of the petition hereinbefore mentioned, on the 30th day of March, 1880, and that he was first duly sworn to speak the truth, the whole truth, and nothing but the truth, in the matter of the said petition, and in answer to the foregoing interrogatories and cross-interrogatories to be propounded to him, and such other interrogatories or questions as might be propounded to him, and that the answers to such interrogatories, cross-interrogatories, and questions, which appear above, are his true answers thereto; and I further certify that I caused the said answers to be reduced to writing, and after being so reduced to be carefully read to him, and that he was informed that if he desired to correct the same in any particular he had the privilege of going so before signing the same, and that he replied that he had no desire to correct the same, and thereupon signed the said deposition with his own proper and genuine signature.

In witness whereof I hereunto sign my name officially and cause my seal of office to be affixed this seventh day of April, 1880.

[SEAL.]

THEO. WAGNER,

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*U. S. Surveyor-General for District of California.*

The petition referred to in interrogatory four (4 of the foregoing deposition, and annexed as Exhibit A of the same, is in the words and figures following to wit:

EXHIBIT A (of the foregoing deposition).

*To John Wasson, esq., Surveyor-General of the United States for the Territory of Arizona:*

The petition of the Colorado Commercial and Land Company respectfully represents that your petitioner is a corporation which was organized on the seventh day October, 1873, under the laws of the State of California, and is now existing under the laws of said State, having its principal place of business in the city and county of San Francisco, in said State. That the object for which said corporation was formed was and is to carry on and conduct the business of dealing in real estate and extraction of precious metals in the Territory of Arizona and the State of Sonora in Mexico, as will more fully appear by the certificate of the secretary of state of the State of California, under his hand and under the seal of said State, marked Exhibit A, which is herewith filed, and is hereby referred to to establish the facts of the organization of the said corporation and the object thereof.

146 2d. Your petitioner further represents that on the fourth day of January, A. D. 1838, Fernando Rodriguez, a resident of the city of Hermosillo, in the State of Sonora, in the Republic of Mexico, and a citizen of said State and Republic, presented his application to Jose Justo Milla, proprietary auditor of said State of Sonora, who then held said

office under the laws of said Republic for the registry, valuation, measurement, and purchase of certain vacant land in the said State of Sonora, embracing five (5) square leagues, more or less, which land is hereinafter particularly described. That said land and the revenue to be derived therefrom had been, prior to said application, by various decrees and laws of said Republic, in force at the time of said application, and of the purchase and grant to him of the same, as herein mentioned, conceded and set apart by the said Republic to the said State of Sonora and was at those times the property of that State.

3d. Your petitioner further represents that on the twelfth day of January, A. D. 1838, the said Rodriguez was permitted by the said proprietary auditor to register said land, and thereafter, such proceedings were had in accordance with the laws, decrees, and regulations of the said Republic and of the said State of Sonora governing said application in respect thereto; that said land was purchased from the said State of Sonora by said Rodriguez, and the purchase money therefor was duly paid by him into the treasury of the State of Sonora, and the said land was duly measured off to him; and on the twelfth day of April, A. D. 1838,

147 the said land was granted to the said Rodriguez, by due authority, in the name and in behalf of the said State of Sonora and of the said Republic; and he became, and was thereby, on the said twelfth day of April, A. D. 1838, invested with a perfect title in fee thereto, as will more fully appear by the documents in Spanish marked B, 1, 2, 3, 4, and 5, and the translations thereof marked Exhibit C, 1 and 2 herewith filed and hereby referred to.

(Which said documents are incorporated in this transcript, as petitioner's Exhibit's B, C, D, E, and F, respectively.—Clerk.)

4th. Petitioner further represents, that after the aforesaid purchase by the said Rodriguez of the said land, to wit, on or about the day of , A. D. 1845, Juan A. Robinson, then a resident of the port of Guaymas, in said State of Sonora, purchased the said land from the said Rodriguez, but did not at the time take or receive, nor has he at any time taken or received from him any deed, conveyance, or other written evidence of title to said land, and that on or about the day of , A. D. 1865, the said Rodriguez died.

5th. Petitioner further represents, that on the 30th day of December, A. D. 1853, by a treaty between the Republic of Mexico and the United States, the sovereignty over a portion of the State of Sonora, embracing the land above described, was ceded by the Republic of Mexico to  
148 the United States, and the said land is now in the Territory of Arizona.

6th. Petitioner further represents, that the said Rodriguez left a widow, viz: Maria Antonia Aguilar de Rodriguez, and seven children, viz, sons: Fernando Rodriguez, Joaquin Rodriguez, Francisco Rodriguez; and daughters, Antonia Rodriguez, Adelaida Rodriguez, Carmen Rodriguez, and Amelia Rodriguez, all residents of the State of Sonora, in the said Republic; that his daughter Adelaida married Carlos E. Hale; his daughter Carmen married Wincelao Yberri, and his daughter Amelia married J. N. Moller. That the said widow and children were the sole heirs and successors of the title of the said Fernando Rodriguez, and were at the time of the conveyance by them to said Robinson, hereinafter mentioned, his sole heirs and successors to the said title.



7th. Your petitioner further represents that the said heirs and successors and the husbands of the daughters married as aforesaid, having been well satisfied at the time of the conveyance to the said Robinson, hereinafter mentioned, of the purchase by him as aforesaid, on the 18th day of October, 1873, executed and delivered to said Robinson a deed in pursuance of his purchase as aforesaid, conveying to said Robinson the title of each in and to the said land, as will appeared more fully by the deed filed herewith marked Exhibit D, and hereby referred to.

(Which said deed is incorporated in this transcript, as petitioner's Exhibit G.—Clerk.)

149 8th. Your petitioner further represents that on the 29th day of November, A. D. 1873, the said Robinson duly conveyed said lands to your petitioner, as appears by the deed herewith filed, marked Exhibit E, and hereby referred to.

(Which said deed is incorporated in this transcript, as petitioner's Exhibit H.—Clerk.)

9th. Petitioner further represents, that the said land granted as aforesaid, is described as follows: Five (5) square leagues, more or less, of vacant land in the Territory of Arizona, contiguous to the Gila and Colorado rivers, situated in front of the confluence of the same, as also opposite to a point named El Paso de los Algodones, on said Colorado River; commencing at a point on the southern side of the river Gila, in front of the confluence of the same with the Colorado River, and running from thence in a southwesterly direction to a point on the said Colorado River, at the ford or pass known as Paso de los Algodones, or the Algodones Ford; thence up and along the meanderings of said Colorado River to the place of beginning, being the same land which was measured off to the said Fernando Rodriguez, as appears by the measurements thereof made on or about the 4th of February, A. D. 1838, the descriptive notes and topographical plan, of which are contained in documents marked Exhibits B and C, herewith filed; a map or plat of survey of said land made by the Samuel Purdy, jun., esq., at the instance of the petitioner, is also filed herewith and referred to, marked Exhibit G, showing the extent and

150 boundaries of said land. Petitioner also files herewith and refers to a map of a reconnoissance of the Colorado River, made by order of Major Gen. P. F. Smith by Geo. H. Derby, a lieutenant of the U. S. Topographical Engineers, in December, 1850, marked Exhibit H., for the same purpose of identifying said land.

Petitioner further represents that there are no claims to said land, to the knowledge of your petitioner, in conflict with that of your petitioner. Wherefore your petitioner prays that the said land may be surveyed by the United States, and that the title of your petitioner thereto may be recognized by the United States and confirmed, and that a patent may issue therefor, and that such other proceedings may be taken by the United States or its proper officers as may be just and proper in the premises.

L. ALDRICH,

*Attorney for Petitioner.*

[SEAL.]

LEWIS LILLIE,

*Secretary Colorado C. & L. Co.*

Which said Exhibit P, and attached exhibits, bear the following endorsements, to wit: No. 13. Exhibit P. El Paso de los Algodones. Depo-

sition of Juan A. Robinson in the case. Filed June 2, 1892.  
 151 James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.  
 Re filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves,  
 deputy clerk. Rec'd Tucson, April 12, '80.

Mr. STEVENSON. We offer deposition of Victor Aguilar, M. Campillo,  
 Fernando Mendez, and B. Rochin, taken before Chief-Justice Reed, of  
 this court, at Hermosillo, in the State of Sonora, on the 27th and 28th  
 days of May, 1892, filed in this case on the 6th of June, 1892. Petition-  
 er's Exhibit Q.

### EXHIBIT Q.

Which said exhibit is in the words and figures following, to wit :

#### UNITED STATES OF AMERICA.

In the court of private land claims, Denver, Col., June 4, 1892.

ALGODONES LAND COMPANY (A CORPORATION), PLAINTIFF,	} No. 1.
<i>vs.</i>	
UNITED STATES, DEFENDANT.	

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#### *Stipulation.*

It is hereby stipulated and agreed on the part of the plaintiff and  
 defendant that all formalities and requirements as to taking deposition of  
 Victor Aguilar, R. C. Hopkins, M. Campillo, Fernando Mendez, and B.  
 Rochin, taken before Chief-Justice Reed, at the city of Hermosillo, State  
 of Sonora, Mexico, on the 27th and 28' days of May, 1892. are waived  
 and the same may be ready to either party, subject only to such objections  
 as either may see proper to assign to any question as to incompetency and  
 irrelevancy when the same is read or offered to be read in testimony.

E. M. SANFORD,  
 COE & CARPENTER,  
*Attorneys for Plaintiff.*

Filed June 6th, 1892.

MATT. G. REYNOLDS,  
*Attorney for the U. S.*  
 JAMES H. REEDER,  
*Clerk,*

By THOS. B. BALDWIN,  
*Deputy Clerk.*

VICTOR AGUILAR, sworn :

Victor Aguilar is may name; residence, Hermosillo; my occupation is  
 that of State treasurer of State of Sonora. Have held position since  
 1887. Am the custodian of the archives of this State (witness shown the  
 original expediente of title). It is part of the archives of my office. It  
 is the title of five sitios. The grant El Paso de los Algodones.

153 The grantee named is Fernando Rodriguez. I do not know  
 whether he held any official position in Sonora in 1838. The

position of State treasurer of State of Sonora in 1838 was occupied by Jose Justo Milla. He was acting State treasurer, but was the auditor of the State.

Q. Have you no records in your office that will show who was the treasurer-general of the State of Sonora in April, 1838?

A. No.

Q. The office of auditor of the treasury was different from the office of treasury-general, was it not?

A. Yes, sir.

Q. Can you give me the name of the treasurer-general in 1839?

A. Jose Maria Mendoza.

Q. Can you give me the name of the treasurer-general in 1837?

A. Jose Maria Mendoza and Ignacio Trellez.

Q. State whether or not Rodriguez was a prominent man in Sonora in 1838?

A. Yes, sir; Rodriguez was understood to be a man of wealth in 1838.

Q. Do you know whether or not it was customary to grant large bodies of land to the same individual upon the same day?

A. Yes, sir; more than one grant.

Q. The condition of the grants was either settlement or cultivation as agricultural or grazing lands.

A. I was not familiar with the customs at that time.

154 Q. Do you know whether Jose Justo Milla, from the records in your office, granted to Fernando Rodriguez a grant known as "La Punta del Sargento" on the same day, to wit, April 12, 1838, containing about ten leagues?

A. Yes, sir.

(Witness here shown a record of his office.)

Q. What is that?

A. Toma de razon, or register of the titles of grants of land.

Q. Examine it during the year 1838 and say whether or not there is any record, note, or memorandum of the grant El Paso de los Algodones to Fernando Rodriguez.

A. No record.

Q. Examine it during the same year and say whether or not there is any record memorandum of the La Punta del Sargento grant to Fernando Rodriguez.

A. No record.

(Book shown witness.)

Q. What is that book?

A. Account book kept by the auditor of the treasury.

Q. Who was the officer keeping that book?

A. Jose Justo Milla.

Q. What date or dates does that book cover?

A. From July, 1838, to Jan., 1839. It is part of the archives of my office.

155 Q. Look at page three of the original expediente of title in this case; now look on the reverse side of page 19 of the same expediente of title and give me the difference in spelling the name Milla.

A. On page 3 it reads Jose Justo Milla, and on page 19 it reads Jose Jose Milla.

Q. Do you know whether or not the expedientes of title which were filed in the office of treasurer-general were written by an official of the department?

A. Yes, sir.

Q. Is the same difference existing now as existed in 1838 between the office of State treasurer and auditor?

A. The same exists. Their functions and duties are entirely different.

Cross-examination by E. M. SANFORD, att'y for plff.:

Q. State if the expediente of title in this grant is the original official record?

A. It is.

Q. Are you acquainted with the official signature of Jose Justo Milla, as auditor and acting treasurer-general, during that portion of 1838 when this expediente was formed?

A. I am.

Q. Please look at signature on page 3 of expediente on this case and state in whose handwriting the words Jose Justo Milla appears?

156 A. It is the genuine signature of Jose Justo Milla.

Q. State the same as to page 12.

A. It is Mr. Jose Justo Milla's signature.

Q. State the same as to the reverse side of page 13.

A. It is Jose Justo Milla's signature.

Q. State the same as to reverse side of page 14, on page 15, 17, reverse side of 18, and the last signature on the expediente on the last page.

A. They are all the genuine signatures of Jose Justo Milla.

Q. Examine specially the words Jose Jose Milla, as a signature appearing on the reverse side of page 19 and being next to the last signature on the expediente, and state in whose handwriting that signature appears.

A. In the personal handwriting of Jose Justo Milla.

(Here testimonial filed in the office of surveyor-general of Arizona, U. S. A., and marked No. 3, page 479, vol. 1, journal original title papers, shown witness.)

Q. Please state what this instrument purports to be?

A. It is the title papers in the Algodones grant in question.

Q. Please state upon what date that instrument purports to be executed?

A. The 12th day of April, 1838.

Q. State if you are acquainted with the official seal of the treasurer-general of the State of Sonora in use in the year 1838, at the time that instrument purports to be executed.

157 A. Yes sir.

Q. Please state what seal it is that is attached to these title papers.

A. The seal of the state treasurer of th' State of Sonora, in existence in 1838.

Q. Is that signature of Jose Justo Milla appearing thereon with said seal, and also the one appearing next before Leonardo Escalante, the genuine official signature of Jose Justo Milla as auditor and acting treasurer-general in the year 1838?

A. It is.

Q. State if in 1838 the office of treasurer-general and auditor were distinctive and separate offices, or was not the auditor a subaltern in the office of treasurer-general and next in rank to him.

A. The offices of auditor and treasurer-general were one and the same office, but the office of auditor was inferior to the treasurer-general.

Q. Then in the absence or disability of the treasurer-general in 1838, did not the auditor perform the functions and duties of the office of treasurer-general?

A. Yes, sir.

Q. Please examine page 19 and 19 of the expediente and state  
158 whether or not that is the original record evidencing the payment by Fernando Rodriguez to the proper officers of the State of Sonora of the purchase money for that grant.

A. It is.

Q. What sum was paid by Fernando Rodrigues to the State treasurer for the purchase of that grant?

A. Four hundred dollars purchase money and six dollars costs.

Q. Do you know the official signature of Jose Maria Mendoza, appearing on this paper marked A?

A. I do.

Q. Whose signature is it?

A. Jose Maria Mendoza's signature as treasurer-general in 1841.

Q. Had, on the date of the execution of that instrument, Jose Maria Mendoza authority under the laws or customs of this country to execute it?

A. Yes, sir.

Q. Please examine the paper marked Exhibit B, now shown you, and state if you know the signature thereto; and, if so, whose signatures they are?

A. One is the signature of Juan Jose Encinas as "alcalde secona" of the city of Hermosillo, and the other is the genuine signature of Jose Justo Milla, as auditor and acting treasurer-general.

Q. Please examine Exhibit C, now shown you, and state, if you know, whose signature is attached to the bottom of the instrument; and, if so, whose it is, and in what official capacity did he sign it?

159 A. It is the signature of Jose de Aguilar, as governor of the Stat' of Sonora.

Q. The same question is asked as to Exhibit D.

A. One is Jose Maria Mendoza, and the other is Florencio Trejo, as second official of the treasury, and the other is Ignacio Pesquerra, the then governor of Sonora, and another one is F. Gutierrez, then secretary of state.

Q. Please examine Exhibit E, now shown you, and same question as appearing second before this.

A. The signature is that of Jose Maria Mendoza, the then commissary-general, which approximately same as treasurer-general.

Q. Examine the expediente, and state if the body of it is in different handwriting; and, if so, how many?

A. There are at least four different handwritings.

Q. After the petition, does not the same handwriting appear in many other records of your office between the extreme dates of that instrument?

A. Yes, sir.

Q. Examine the testimonio, and state if that is in the handwriting of any person whose handwriting appears in many other records in your office between the extreme dates of the instrument.

A. Yes, sir ; there is handwriting in this office similar to that.

Q. Are there not a large number of grants ; and, if so, how many in 1838 that were not registered in the toma de razon. ?

160 A. There are some, but I can not give them until I see the records.

Q. Have any of those that have not been registered been legislated upon or recognized by the federal authorities of Mexico ; and if so, how many have been adjudicated upon ?

A. (Erased.)

Q. Then did the mere fact that the grant was not registered in Toma de Razon divest the purchaser of the land ?

(Objection by the United States.)

A. The fact that the entry is not made in the Toma de Razon is not proof that the title is not valid.

Q. Have you any records showing the handwriting of the persons who purport to have written the body of the testimonial in this case ? If so, please exhibit the same here.

A. A number of documents here shown and exhibited were written by the same man who wrote the body of the testimonio of this case.

Q. Do you know of any other grant which in effect were petitioned got to be inhabited as soon as the hostility of the savages was abated ? If so, name the grant.

A. I know of some, but I will have to look at the archives to give the names.

Redirect by REYNOLDS :

Q. Do you know of any petition for a grant which says the party will comply with the conditions imposed by law, or by the granting officer wherever the notorious condition of the country shall permit ?

161 A. I have heard of some but can not tell them precisely. I—  
Q. Did you really ever hear of such terms being used in a petition for a grant except in the Algodones case, and the Sargento case ?

A. Yes.

Q. Have you any record in your office showing the purchase money by Rodriguez for the Algodones grant or the Sargento grant ?

A. The entries made in the month of April, 1838, are missing.

Q. Was not the record of the payment of the purchase money for the sale of public lands kept with a good deal of care ?

A. Yes, they were all kept, by the archives of that date are all torn and the records incomplete.

Q. Is there any record, mutilated, or in good order, showing the payment of any money by any person for any grant in the months of February, March, April, May, June, or July, 1838 ?

A. Yes; there are some of those records. We have some here ; they begin July.

Q. Are there any grants on file in your office, except the Algodones grant and the Sargento grants, where there has been no minute or memorandum in the records of the office as to their existence ?

A. I do not know.



Q. I will get you to examine the records of the office to see  
 162 whether any record of the purchase money being paid for the Tusi-  
 bampo grant to one Juan Jose Rodriguez, dated April 10, 1838.  
 Also Juan Pedro del Templo, in favor of Jose Ignacio Garcia, dated April  
 10, 1838. Also Le jaitas in favor of Ignacio Flores, April 29, 1838.

A. The book of the month of April, 1838, *id* not in existance.

Q. Do you know whether the book of the month of May is in exist-  
 ance?

A. The entries for the months of Jan., Feb., Mar., April, May, & June  
 are missing.

Q. Here witness shown photographic views Nos. 1 to 9, inclusive, and  
 ask him to compare them with the original exp'diente on file in his office.  
 Have you compared the photographic views with the expediente on file in  
 your office, and if so, are they correct?

A. I have compared them, and they are correct.

Q. Witness shown photographic views of parts of expediente of title to  
 the La Punta del Sargento grant to Fernando Rodriguez, dated April  
 12, 1838, from 10 to 14, inclusive, and asked to compare the same with  
 the expediente on file in his office. Have you compared the photographic  
 views with the expediente or matrix on file in your office, and if so, are  
 they correct?

A. I have compared them, and they are correct.

Q. Look at photographic exhibits Nos. 15 to 17, inclusive, and state  
 whether in your opinion they are correct signatures of Jose Justo  
 Milla?

163 A. I have examined them, and they are correct.

Q. Do you know the official signature of Jesus Trasquillo?

Witness shown photographic views Nos. 18, 19, and 20, as to the sig-  
 nature of Jesus Trasquillo.

Q. Are the photographic views shown you correct views of the genuine  
 signature of Jesus Trasquillo?

A. I have examined them, and they are genuine.

(Witness shown photographic views of Santos Vigarrias' signature.)

Q. Is that photograph a correct view of the genuine signature of Santos  
 Vigarria?

A. Yes, sir.

(Witness shown photographic Exhibit No. 22.)

Q. Is that a correct photographic view of the page Toma de Razon,  
 showing photographic view of the registry of two grants, dated April 10,  
 1838, followed immediately by one dated April 29, 1838?

A. It is correct.

(Witness shown photographic views of Exhibit No. 23, and states that  
 is the genuine signature.)

(Photographic Exhibits 1 to 25, inclusive, are filed and made exhibitd.  
 in behalf of the Government in this cause.)

Recross-examination by PLFF.:

Q. Is not a matrix and expediente one and the same?

164 A. Matrix is the original paper that remains in the office, while  
 an expediente is the copy of any paper.

Q. Is not the matrix of a grant the primary record of the same?

A. Yes, sir.

-Q. Then when there is no other record of a fact contained in the matrix than the matrix itself, does not your Government in its various departments take the recital of facts contained in the matrix as conclusive evidence thereof?

(Objection by the United States.)

A. Yes.

Q. When the matrix is not registered in the Toma de Razon, is not the fact that the matrix exists evidence of the transfer of the title from the Government to the purchaser?

(Objection by the United States.)

A. No (yes), because it appears on the matrix, which is sufficient Toma de Razon itself.

Q. Please examine the matrix of the Punta de Sargento and state whether or not the signatures thereto are the genuine signatures of the persons signing the same.

A. I have examined them and they are the genuine signatures of the persons signing the same.

Q. To correct a question asked you this morning, was it not the matrix of the grant De El Paso de Algodones that was exhibited to you and not an expediente?

165 A. Yes.

Q. Are not all the records which have been exhibited to you and called by us expedientes, the original matrix record?

A. Yes.

Q. Examine photograph Exhibit No. 23 and state if Bartolo Miranda's name appears in the original matrix of the Babacowori grant.

A. It does not appear.

Q. Please examine Vigarria and Jesus Trasquillo appearing in the matrix of the Algodones grant in question and state whether or not, if you know, that they are the genuine signatures of those persons.

A. I have examined them and they are the genuine signatures of the persons signing the same.

V. AGUILAR. [RUBRIC.]

Q. Is not the grants mentioned in photographic # 22 recognized legal titles in Sonora?

(Objection by the United States.)

A. Yes.

V. AGUILAR. [RUBRIC.]

JOSEPH R. REED,

Chief Justice.

MIGUEL CAMPILLO, sworn on behalf of petitioner, testifies as follows:

Q. My name is Miguel Campillo; my age is 72 years; my occupation a lawyer; residence, Guaymas, Mexico. I have lived there since 1836. In 1838 I was first subaltern employee of the subcommissary of Guaymas; afterward I was administrator of the revenue at Guaymas, of the State. After I was administrator, I have been judge of the first  
166 instance at Guaymas, district judge, dept. to the State congress for two terms, sec. of the Government for three terms; under those charges I had to reside in Ures. I was secretary first under Col. Cuestas, third Gen. Ramirez Arellano, second Fernando Cubillas.

Q. Did you know Jose Justo Milla in his lifetime?

A. No, sir; when I went to Ures he was residing Arispe.

Q. Do you know the official signature of Jose Justo Milla, when you see it?

A. Most undoubtedly.

Q. How do you know his official signature?

A. I know it in the official documents I have seen and in his private letters written by him; I remember to have seen letters written by Jose Justo Milla to his brother Don Juan Esteban.

Q. Were you familiar with his handwriting at that time?

A. Since that time I knew it.

Q. When was this that you knew personally his handwriting?

A. I have said before, that during my stay in Ures, as his brother Don Juan Esteban was my colleague in the congress and a close friendship existed between us.

Q. How many times and where have you seen Jose Justo Milla's handwriting?

A. I say that by virtue of the public offices I held at that time; I had the opportunity of seeing expedientes and other writings, signing them as contador of the treas.

167 Q. In your official capacities then you received from Milla at that time papers with his official signatures attached?

A. No, sir; I did not have the occasion.

Q. Then how did you receive the expedientes and other papers, knowing them as the signatures of Milla affixed?

A. I have not said that I have received expedientes; I have said by virtue of my office I have seen them.

Q. How often and during what time did you see them?

A. During the time I have said I was in Ures, in my official capacities. I have described; in 1849, when I was deputy first and afterward when I was secretary of State.

Q. When did Milla die?

A. About 1844.

Q. How old was he at that time?

A. I do not know; I was in Topeke.

Q. Witness shown testimonio Algodones and asked whether or not he knows whose handwriting the words Jose Justo Milla lastly appearing is? If so, state.

A. Positively, I can not say so, for I never saw him write it; but in my judgment it is. It is the same handwriting and rubric he used in his official acts.

Q. I ask the same question as to the writing and rubrics of Milla next to the seal?

A. It is the same.

168 Q. Did you know the seal of the auditor-general of Sonora in 1838? And, if so, state whether or not the seal attached to that document was the genuine seal of the auditor-general in use at that time?

A. Yes, sir; that is the same seal of treasurer-general of the State.

Q. Are you interested directly or indirectly in the Algodones grant or any matter growing out of it?

A. Neither directly nor indirectly. I didn't even have knowledge of the title.

Q. Here the original matrix is shown witness, and he is asked to look at its several signatures and rubrics of Milla therein, and to state whether or not he knows them, and, if so, state in whose handwriting they are?

A. The first signature on page 3, is Jose Justo Milla. I recognize another signature here, it's that of Alejo Carrillo; that the reason signatures are unlike in some places is because quills were used, and not steel pens; on page 12 the signature and rubric is that of Milla. On the reverse side of page 13 the signature and rubric are that of Jose Justo Milla, and Alejo Carrillo's name and rubric are on the same page. On the reverse side of page 14 & 15 and page 17, and reverse side of 18, the signatures and rubrics are that of Milla; and I knew Alejo Carrillo's signature and rubric on page 18 are genuine. I know Jose Jose Milla's signature is that of Jose Justo Milla; the word Jose in the middle is a voluntary mistake. The last signature and rubric on the matrix are that of Jose Justo Milla; I know the signature of Juan Encinas appearing on page 20 above that of Santiago Sanchez; and it is that of Juan Encinas, and the whole page is in his handwriting. At that date he was second alcalde of Hermosillo.

Cross-examination by MATT G. REYNOLDS:

Q. Did you ever have occasion to examine critically and carefully the signatures of Jose Justo Milla?

A. Yes, sir; I have said so.

Q. Where?

A. In Ures.

Q. Have you ever been called upon before this time to make an examination of various signatures of the name Jose Justo Milla with a view of discovering whether it had been written by Milla or not?

A. Not until now.

Q. Then you base your opinion that the signatures exhibited to you, appearing upon the testimonio, also on the matrix, upon their general appearing similarity to your recollection of signatures you have seen before, is it not?

A. Yes, sir; without doubt.

Q. Do you think the same man wrote the signature on the reverse side of the matrix, Jose Jose Milla, as wrote the signature Jose Justo Milla on the first page of the record book of this office, "The taxes on consumption of goods?"

A. Without a doubt.

Q. Did you ever see Milla write his name?

A. No, sir.

Q. Have you ever had occasion before this to examine and compare signatures of individuals with a view of determining from such comparison the genuineness thereof?

A. Yes, sir; sometime ago I was called to Tucson in the matter of determining whether the signature of Jose Maria Mendoza were genuine or not. I went for Mr. Robinson, same gentleman who appears as atty. in this case.

Q. Had you examined these signatures that have been shown you before to-day with a view of testifying as to their genuineness?

A. Only the signature Alejo Carrillo.

Q. Were you asked before to-day to examine the signature of Jose Justo Milla on the original matrix by anyone?

A. No, sir.

M. CAMPILLO. [RUBRIC.]  
JOSEPH R. REED, [RUBRIC.]  
*Chief Justice.*

FERNANDO MENDEZ, sworn :

171 My name is Fernando Mendez ; age, 36 years ; residence, Hermosillo, Sonora. Am contador of the treasury department of the State of Sonora. Have been in the position six years, but thirteen years in the department.

Q. Do you know Jose Justo Milla's official signature and rubric when you see it?

A. Have seen it many times.

(Here witness handed the matrix and testimonio in the Algodones grant and asked to state whether or not the names of Jose Justo Milla or Milla and his rubric are in his official hand as treasurer-general of Sonora in 1838.)

A. They are his.

Q. Have you any handwriting in your office corresponding to the writing in the body of the testimonio?

A. It looks like many other writings in the office which occurred about that time.

Cross-examination by Mr. REYNOLDS for U. S. :

Q. In your examination of the archives in relation to grants of public lands, did you ever find the name of Jose Justo Milla written Jose Jose Milla, except in the matrix of the Algodones grant?

A. I have not seen it in any other grant. This is the only one where I have seen it written Jose Jose Milla.

Q. Do you believe the person who wrote the signature Jose Jose Milla wrote the signature Jose Justo Milla on the front page of the  
172 book of Taxes on consumption of goods (which was shown other witnesses)?

A. It looks to me as if there was a little difference, but I think they were written by the same person.

Q. Examine the word "Milla," on July 22, 1838, in the record book, and examine the word "Milla" in the matrix of the Algodones grant, on reverse side of page 19, where the full name is written "Jose Jose Milla," and state whether, in your opinion, they were written by the same person.

A. I say as I did in the other answer, that they were probably written by the same person, though I observe a little difference.

FERNANDO MENDEZ.

BARTHOLOMEW ROCHIN, sworn on behalf of the petitioner :

My name is Bartholomew Rochin ; age, 46 years ; residence, Hermosillo, State of Sonora. Am an employee in the office of the treasurer-general. Am in charge of the archives of the Mexican land grants ; have been so for four years. Am perfectly familiar with the documents on file in my

charge. The matrix of the "Algodones grant" is in my charge. Have arranged, examined, and classified all the various grants in my charge.

Question. From your experience and knowledge and study of  
173 the records in your office, do you know the official signature of Jose Justo Milla when you see it?

Answer. Everywhere I know it.

(Here the matrix of the Algodones grant is handed witness.)

Question. Please examine this as to signatures and rubrics of Jose Justo Milla, and say in whose handwriting they are.

A. I do not know in whose handwriting they are, but I know that these signatures and rubrics, in the same handwriting, appear in more than five hundred papers in this office.

Q. Have any of the other documents containing like signatures and rubrics been recognized or are they recognized by the laws, customs, and various departments of your State as the genuine official signature of Jose Justo Milla as treasurer-general of the State of Sonora in about 1838?

A. Yes, sir.

Q. Does his signature appear alike in every place as to being connected or disconnected in the letters of it?

A. As to that, I have paid no attention.

Q. Look at the matrix in the Alameto grant, and say whether or not the letters in the word "Milla" are connected on to another.

A. It is apparent they are connected.

Q. Look at signature in the Villalobos grant matrix of 1835, and say if the word Milla is there connected as to the letters in it.

A. Yes; they are connected. It is the same signature.

174 Q. Also in another place in same grant matrix?

A. They are connected and it is the same signature.

Q. Again look at another signature in same matrix?

A. It is connected and is the same signature.

Q. Is that matrix recognized as a lawful conveyance of the title of land in this State?

A. Yes, sir.

Q. State whether or not there are any other records showing that the rubrics of Milla sometimes become broken?

A. I have not noticed it before until I see this one and another one in the matrix of "Santa Martha San Joaquin Oate, and Corral Viejo."

Q. Is this a recognized title?

A. Yes, sir.

Q. In this book, "Derecho de Fincas Urbanas," are there not two "I's" connected in another place in Milla's signature?

A. To my mind they are connected.

Q. Are not the "M's" in Milla written sometimes differently?

A. That is only the fault of the pen, but the signature of the letter is the same.

Q. In another place in the same book are there not other signatures where the "I's" are directly connected?

A. There are others connected.

Q. State whether or not these signatures of Milla in this book,  
175 being the ones shown witness Hopkins this morning, are of the same general character as the signatures in the matrix and testimonio in the Algodones grant.



A. They are the same.

Q. State whether or not there is any difference in the commencement of each rubric.

A. In the rubrics of Milla you always find those differences.

Q. How many grants were registered in 1838 in the "Toma de Razon?"

A. I do not know.

(After counting them in the book, witness answered twenty-one.)

Q. How many grants were created that year, if you know?

A. I do not know.

Q. Do you know whether there were other grants created in 1838 and not registered in this book of "Toma de Razon" (Photo Exhibit 22)?

A. I do not know.

Q. Are there not many grants or matrix's here which have not been registered in this book Toma de Razon?

A. That is true.

Q. Are there not unregistered grants which are recognized as perfect titles?

(Objected to by United States as a conclusion.)

A. There are among others; here is one called the San Fernando de la Casita."

176 Q. Examine the testimonio in the Algodones case, and say if the signature of Jose Justo Milla is in the same general character as his other signatures.

A. Yes.

Q. Do you know the seal attached to the Algodones testimonio?

A. I do not know whether that is the seal of the treasurer-general of that date or not.

Cross-examination by Mr. REYNOLDS, atty. for U. S. :

Q. Have you not just examined to find another seal of the treasurer-general of that date? If so, what is the result of your examination?

A. I was looking among the communications, but could not find a seal of that treasurer-general of that date.

Q. Are there no records of laws of the State of Sonora prescribing what the seal of the treasurer-general shall be, or does he adopt any one he may see proper?

A. I have no knowledge of those facts.

177 Q. Have you ever seen, in the examination of the archives of this office, where Milla wrote his full name Jose Jose Milla, instead of Jose Justo Milla?

A. I have not seen except the one case of the repetition of Jose Jose Milla in the matrix of the Algodones grant, but the handwriting and the rubric are the same, and Jose Jose is but a repetition.

BME' ROCHIN.

JOSEPH R. REED,

[RUBRIC.]

[RUBRIC.]

Chief Justice.

Which said Exhibit bears the following indorsements, to wit: Algodones Land Co., plff., vs. United States, defendant. Ex. Q. Depositions of Victor Aguilar et al. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92. James H. Reeder, clerk, I. L. Chaves, dep'y clerk.

178 Mr. STEVENSON. I next offer the depositions of B. Rochin, J. A. Forbes, G. H. Robinson, Diego Escalante, Manuel Ferreira, Victor Aguilar, Roman Corral, Jose Mendoza, Eduardo Castaneda, Luis E. Torres, Leon-Cilas Encinas, Agustu Bustamente, taken before Justices Murry and Sluss, at the cities of Hermosillo and Guaymas, on the 26th, 28th, 29th, and 30th of November, and 1st and 3rd of December, 1892. (Petitioner's Exhibit R.)

## EXHIBIT R.

(Objected to by the United States.)

Which said exhibit is in the words and figures following, to wit:

ALGOD'NES LAND C'MPANY, PLA'NTIFF. }  
 vs. }  
 THE UNITED STATES, DEFENDANT. }

Depositions of divers witnesses taken before Justices Murray and Sluss, at Hermosillo, in the State of Sonora, Republic of Mexico, on the 26th, 28th, 29th, and 30th of November, A. D. 1892, and before Justice Sluss, at Guaymas, in the State of Sonora, Republic of Mexico, on the 1st and 3rd of December, A. D. 1892:

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181 Present as counsel : E. M. Sanford, esquire, and A. M. Stevenson, esquire, representing the petitioners ; Will. M. Tipton, esquire, special agent court of private land claims, representing the United States attorney.

Mr. James H. Reeder, clerk ; Mr. L. F. Parker, jr., official stenographer.

It is hereby stipulated and agreed by the respective attorneys [2] of record of the said parties, that all objections as to the competency, relevancy, or materiality of the testimony here and in this manner taken, except objections as to the form and manner of taking the same, can be made by either party at any time before the trial, or at the trial of said cause, or at the time said depositions are offered or read in evidence in this case.

It is further stipulated and agreed by and between the parties hereto, that Hon. James Alexander Forbes, United States consul at the port of Guaymas, in the State of Sonora, may act for and on behalf of each of the parties as interpreter.

(NOTE.—The depositions offered and taken at Hermosillo were in the office of the custodian of the archives in the treasury department.—Steno.)

182 BARTOLOME ROCHIN, being first duly sworn on behalf of the petitioners, testified in Spanish as follows :

Hon. J. A. Forbes, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Question 1. What is your name, age, and official position ? [3]

Answer. I am forty-six years of age and am a public officer here.

Q. 2. What is the style of your position ?

A. I am the keeper of the archives for the treasury.

Q. 3. How long have you held that position ?

A. For five years.

Q. 4. Since what date ?

A. Since 1886.

Q. 5. State whether or not you are familiar with the archives of the State of Sonora.

A. I am perfectly familiar with all of them, as I have arranged these archives.

Q. 6. State what document this is I hand you.

A. That is a matrix of the grant of Huabrari.

Q. 7. In what district does the land lie ?

A. In the district of Mictuzama, in the State of Sonora.

Q. 8. These few leaves that are separated in the grant, are they part of the original document ?

A. This is the same original draft of the proceedings that were had after the land had been sold at auction, and this was the commencement of the final proceedings of which [4] the treasurer-general gave the title to the int'rested parties ; he said, also, that he had a whole book like this of such drafts as these.

Q. 9. Is that a record document of this office ?

A. Yes, sir.

Q. 10. State if that document is recognized by the executive, judicial, and legislative departments of this country as evidence of the facts therein recited.

A. Yes, sir; because the titles which are issued to the interested parties are commenced in this manner; because the matrix or the original title remains here, and this is a certified copy that is given to the interested parties, and is commenced in this way, and ends like the last two pages of this draft.

Q. 11. Then, if I understand you right, this is the form of the heading for the testimonio in the Guepare grant; then the matrix follows, and ends with the latter part of this document, of which this is the original draft, and the testimonio is delivered to the interested parties?

A. Yes, sir.

Q. 12. What is the date of this document? What is the date of the expediente of the Guepare grant?

A. On the 19th of October, 1832.

184 Mr. SANDFORD. We now offer to have read in evidence a portion of the document which the witness has referred to, and interpreter reads as follows:

"Jose Maria Mendoza, treasurer-general of the free [5], independant, and sovereign State of Sonora: Whereas, October 11th, of the sovereign decree numbered seventy of the General Congress of the Union, dated August 4th, 1824, granting to the States the revenue that by such law was reserved to the federation, and one of those revenues being from the lands of their respective districts, and which belonged to them by consequence, in which it was ordered by the honorable constituent congress of the State that was united by that of Sonora and Sinaloa, according to law number thirty of the 20th of May, 1825, as well as the successive legislatures by other decrees relative thereto, there having been made a formal denouncement on the 11th of June, 1827, by the Citizen and citizen Fernando Rodriguez, resident of San Maria de Bacrac, before the treasurer-general, who was of the United States, for that tract, named or offered, situated within the same jurisdiction, there was admitted to him according to law, on the date of the 26th of April, 1828, by previous justification, with a certificate from the alcalde of the mentioned Pueblo that the interested party had sufficient quantity of stock or property to place upon the land which he registers, &c."

185 Q. 13. From August 4th, 1824, up to the year 1834 were the [6] forms of these testimonio's generally the same as that?

A. The same.

Q. 14. I will ask you if the form used in the testimonio's of all grants were the same after 1834 as that of the Algodones testimonio, in a general way, so far as recitation of laws were concerned?

A. Exactly the same; the whole of them were exactly the same. This one is just the same as that. "Whereas, by October 11th, &c.," and closes finally in the same manner.

Q. 15. Then the commencement and ending of these testimonio's are of the same general character?

A. Exactly the same in every particular.

(Plaintiff's Exhibit A offered and introduced.)

Q. 16. State what document plaintiff's Exhibit A is.

A. It is a list compilation of the dates of grants that exist in the treasurer-general's office and a form made by myself.

Q. 17. Does the Algodones and Sargento grants appear enlisted in this document?

A. Yes, sir.

Q. 18. What book is this now handed witness?

A. It is a registry book of titles issued from the year 1831 to 1849.

186 Q. 19. Known as the Toma de Razon? [7]

A. Known as the Toma de Razon.

Q. 20. Is that book one authorized by the laws of Sonora, or is it a memoranda book, kept for the convenience of the treasurer-general?

A. It is a book made for the purpose of being presented in evidence—wherever it may be presented.

Q. 21. Do you know whether the laws of Sonora of 1838 required that book to be kept—by statute law?

A. I don't know, but I suppose it was, because it contains the amount paid for all lands that were granted between the dates '31 and '49.

Q. 22. Look at the records for the year 1838—how many grants are registered in that book in that year, 1838?

A. Twenty-one.

Q. 23. Give the name of each grant and its date.

A. Ano de 1838. January 31, Saguinal.

February 10, Huerta de Jalpa.

February 20, Seri.

March 3rd, Rancho de Moreno.

March 10th, Ranchito de los Monreales.

March 18, Mescales.

March 27, Garrote y Rancho de Santos Grijalva.

March 27, Llano de la Cabeza.

April 10, Iusibampo.

April 10, Pedro del Templo.

April 29, Lajitas y Palos Cramos.

May 21, Cieneguita.

May 30, Santa Gertrudis y Pavier de Leon (huecos y baldios entre estos ranchos).

187 May 30, Fasteota y Oguia, Moranda. [8]

May 30, Pacion.

May 30, San Antonio.

May 30, San Jaun de Madrid.

May 30, Crevantes.

June 30, Santa Cruz.

June 30, Cendraditas.

July 30, San Rafael del Carrizal.

Here a recess was taken until 3 o'clock p. m.

At 3 o'clock.

Q. 24. Have you named now all of the grants that were registered in the Tome de Razon, in 1838?

A. Yes, sir.

Q. 25. Was the title to the Auga Salada y Caborquenos issued in 1838?

(Question withdrawn.)

Q. 26. In what year was the title to the Pocitos made?

A. In the year 1838.

Q. 27. Is that grant mentioned in the Toma de Razon for 1838?

A. No, sir.

Q. 28. In what district and State is that grant located?

A. District of Hermosillo, in this State.

Q. 29. Do you personally know whether that grant—the Pocitos grant—is recognized as a valid grant to-day?

A. All grants which appear here are genuine, and these which I have offered to testify to are legal grants.

Q. 30. Do you know where the Pocitos grant is situated?

A. No, sir.

Q. 31. Do you know who owns it?

188 A. I do not say, but I hear it is by the agents of Ceriao [9] Aguirre.

Q. 32. What is the date of that grant—month and day?

A. 1838.

Q. 33. What day of the month?

A. I can only tell by looking at the expediente.

Q. 34. Are not these entries that are made in the Tome de Razon made when the title is issued, and not when the land is denounced?

A. The entries are made at the time the title is issued.

Q. 35. And is not the title issued at the time the money is paid?

A. Sure.

Q. 36. And not before?

A. Of course not.

Q. 37. Then when the purchaser of these lands pays the money, the entry is supposed to be made in the books, and not until then is the title issued?

A. Before that he has no rights whatever, and only after the time the money is paid, then does he acquire any rights.

Q. 38. In what year was the Saguara grant title issued?

A. 1838.

Q. 39. Is there any note of that title in the Toma de Razon?

A. Yes, sir.

Q. 40. Are there any grants the titles to which were issued in 189 1838, that you have not mentioned? [10]

A. There are a great many that are not in the Toma de Razon, and those issued during the month of April, 1838, are wanting because the book of Toma de Razon was taken away from here of that date some years ago. It is already five years since I have been in charge of these archives, and it was not here then.

Q. 41. In whose handwriting is this pap'r?

A. It is the writing of the same Mr. Telles, who was the same treasurer-general.

Q. 42. When was Mr. Telles treasurer-general?

A. It is not mentioned the date here, but I have a great many documents that tell (after looking), '77 or '78.

Q. 43. Has this paper been with the records of the treasurer-general's office since you have had charge of the office?



A. Yes, sir; I took this document from the archives in the treasurer-general's office.

Mr. E. M. SANFORD. We ask now to have the document about which witness has just testified read at length and placed on the record as part of Mr. Rochin's testimony. And the interpreter read as follows:

"I, Manuel Diaz, as treasurer-general of the State of Sonora, Mexican Republic, acting by notary public, appeared Matias Moran and citizen

Antonio Corrillo, of this presinet, who do say that, being person-  
190 ally present in the treasury office for the purpose of giving [11]

compliance to the foregoing disposition or order of the governor of the State, proceeded to examine, one by one, the signatures of which are contained in the expediente that forms the title to the lands situated between the Colorado and Gila rivers, that in the year 1838 was adjudicated to Don Fernando Rodriguez, in that of 1847 was approved by the Supreme Government of the Nation, as a result of the examination we have made of the original expediente above referred to, the lines with which it is written and the signatures that accompany (?) it, we are able to certify, and effectively do certify: First. That we had before us an expediente headed with this name: Title of the grant, &c. Second. That said title is composed of, or contained in—blank—useful written pages on stamped paper, that was issued at the period when it was issued, and it is altogether the same paper that we have seen in hundreds of expedientes upon the adjudication of the vacant lands. Third. In this same manner we certify in due form that the title which we have seen and had before us contains or embraces five square leagues of land contiguous to the Gila and Colorado rivers, opposite the junction or confluence of their waters, and comprised within the points named is? El Paso

de Los Algodones. Fourth. That the mentioned title was issued  
191 and authorized by the treasurer-general of [12] the State, Don

Jose Justo Milla, his signature being found upon the expediente being exactly equal to those that he used in all his official acts, and with which he would legalize all the documents that he would issue, whether as a public functionary or as a private person. Fifth. That the signatures of Senors Francisco Mendoza and Jose Carrillo that appear upon the expediente are the same that was used and were accustomed in all their official acts, and for that reason we consider them legal and genuine—those that they wrote (or made) at the auction board, celebrated for the auction sale of the mentioned lands. Sixth. Lastly (or finally), we certify that the signatures of the surveyor, Don Ricio Carrillo; those of Alijo Carrillo, Luis Carranco, Santos Vigarria, and Jesus Trasquillo, who served as attending witnesses in all of the proceedings of the expediente, as well as those of the appraisers, Julian Padilla and Alonzo Maria Treciera, and those whose signatures appear in the expediente El Paso de Los Algodones, are genuine because they were the same that they were accustomed to use in all their writings during their lifetime. And in order that this may be evidence where necessary, and it may be convenient, we give the present certificate in the city of Hermosillo, capital of the State of Sonora, Republic of Mexico, [13] on the  
192 (blank) day of the month of June, of the year 1881. Signed under our own hands and seals and the seal of the treasury-general and of the notary public, the citizen Marcus Moran."

Witness excused.

Mr. J. A. FORBES, being first duly sworn on behalf of the petitioners, testified, in English, as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and place of residence?

A. My name, James Alexander Forbes ; my age is fifty-four years ; my residence at present, Guaymas ; my home is Alameda County, California.

Q. 2. What official position do you now hold?

A. American consul at the port of Guaymas.

Q. 3. What official position were you holding at time of receiving your appointment as such?

A. Keeper of the archives and Government translator of the United States surveyor-general's office, in California.

Q. 4. From whom did you receive your appointment as keeper  
193 of the archives ? [14]

A. From the surveyor-general in office at the time.

Q. 5. From whom did you receive your compensation?

A. From the United States Government.

Q. 6. How long had you held that position?

A. Fourteen years.

Q. 7. State whether or not you have made indexes of records and signatures, and of grants of the Spanish and Mexican governments, or States during that time.

A. Yes, sir.

Q. 8. Are you not familiar with the language?

A. Yes, sir ; I am.

Q. 9. How long have you been familiar with the language?

A. Since I commenced to speak it.

Q. 10. Do you read and write that language?

A. Yes, sir.

Q. 11. Can you translate the Spanish language into the English and the English into the Spanish?

A. Yes, sir ; tolerably well.

Q. 12. What were your duties as keeper of the archives of the surveyor-general's office of the State of California?

A. To translate the entire records and make a compilation of the contents of all of the military and civil archives of the Government, and to compile and make translations of all grants, expedientes, and documents that are contained in the several land claims, either in the  
194 [15] archives or presented by the claimants to the lands for compilation, and to furnish translations or copies of any documents that were required by the parties who made proper application therefor ; to make reports with reference to the condition, validity and status of the several grants, as they would be required of me by my superior.

Q. 13. State from what languages and into what languages these compilations and translations were made by you.

A. They were made from the Spanish into the English, the records all being in Spanish, they being ancient records that pertained to both Spanish and Mexican matters prior to the date of the American occupation.

Q. 14. And did this work of yours involve the laws of Spain and Mexico concerning land grants?

A. In a great many instances the laws were quoted and the manner and mode of granting lands were given.

Q. 15. Do you know the manner and form in which land grants were made in the Republic of Mexico during the last one hundred years?

A. Somewhat; I have an opinion; I have an idea as to how they were granted.

Q. 16. Would you please state to the court the history and manner in which these grants were made?

195 A. I don't consider myself an expert on that matter [16]; you will excuse me if—

Question withdrawn.

Q. 17. Do you know what, in the granting of lands, is the record of the grant?

A. Yes, sir.

Q. 18. What is the name or style of the document which makes the complete record of the grant?

A. They call it here the matrix.

Q. 19. What is the general character of the matrix?

A. It is the record of the proceedings by which it is shown all of the acts and the proceedings thereto has been done. After this application was made by the interested party who would solicit for a tract of land, of vacant land.

Q. 20. Of what kind of material is this matrix made of, form of it, the general appearance of it?

A. The contents of the papers is an application of the parties who solicit for the land, and a notice or order to the authorities of the district in which the land is situated, for a report, &c., then the order and notice given to the surrounding neighbors, or who may allege any rights in the premises, a report of the authorities to the superior, then the decree  
196 of said authority, if the grant was subject to alienation [17], and an order for publication, &c. The lands granted in California were lands granted by the colonization act of August 18th. Here there were none. They were made in conformity with the annual regulations, that had not been repealed, which are situated in the Amd Indios of Dec. 4th, 1786.

Q. 21. Then does this matrix contain all the papers that go to make up the proceedings on which a grant or sale of land is made?

A. Yes, sir.

Q. 22. Then it does form a similar record, as found in other documents conveying other lands?

A. Yes, sir.

Q. 23. Please examine this document and state whether or not you have ever seen it before.

A. No, sir; I looked over it this morning.

Q. 24. Do you know what document that is?

A. It purports to be a record of the proceedings instituted for the measurement, appraisement, and public sale at auction of five square leagues of vacant lands, for the purpose of cultivation in favor of Don Fernando Rodriguez, a resident of Hermosillo, which lands are situated contiguous to the Colorado and Gila rivers, opposite the junction of the same,  
197 and as far as the point named El Paso de Los Algodones, on the same Colorado [18] River to the north of this State.

Q. 25. What is the name of the grant?

A. El Paso de Los Algodones.

Q. 26. State whether or not this document is the original matrix of the Algodones grant?

A. It seems to be the original expediente, a record of the proceedings of the sale of said lands, and styled by some the matrix; that's what we call it here.

Q. 27. Do you not find in that document signatures purporting to have been made by Jose Justo Milla?

A. Yes, sir.

It is agreed between the parties that the books examined by the witness are the official records of the treasurer-general's office in the State of Sonora, each of which are admitted to be genuine.

By Mr. STEVENSON:

Q. 28. I will ask you if in your opinion the matrix of the Algodones grant, that you have examined, is in the regular and proper form, and contains the full record of the proceedings required to be had for a grant or sale of public lands, of the character indicated by the paper examined?

A. I think it is.

Q. 29. I will ask you to examine the signatures of Jose Justo Milla now in this original matrix, as well as the signature of Milla without the words Jose Justo, and state whether or not they are the same signature [19] and the same rubric, and if in your opinion they were written by the same person.

A. From what I have seen of them I think they written by the same person.

Q. 30. I will ask you to compare the signatures of Jose Justo Milla, appearing on the matrix now being examined by you—being the matrix of the Algodones grant—with other signatures of Milla, now in the several books handed you, as well as Milla's signature as found in the matrix's of the Ceverantas grant, and in the Jamita y Tomeorobabi, and the Jucarros, and the Buelo Biejo, and the Cienjueia, and the Jesus Maria, and state whether or not the signatures of Milla in the Algodones grant are the same as those in the other grants and records examined by you.

A. I think they are.

Q. 31. Then if the signatures of Milla appearing in these record books and different matrix's examined by you are his genuine signature, what is your opinion as to the signatures of Milla in the Algodones case as being or not genuine?

A. My opinion is that no person has a right to question the validity of the documents that purport to be the original genuine records of the State of Sonora as valid and kept by the constituted authorities of the State. I could not pass an opinion nor say anything except that all the documents contained in the several matrix's and expedientes that purport to be the records of the country are genuine.

Q. 32. Would the fact that there was a difference in the several rubrics used by the different officials in any way tend to make you think that such difference was evidence of the signatures not being the true and genuine signatures of the officials purporting to sign these documents?

A. No, sir; because the Government officials, as shown by the Mexican and Spanish records, show little or not much ability in signing exactly the same at all times.

Q. 33. I will ask you to examine the signature of Jose Carrillo, appearing in the original matrix of the Factaria grant made in 1837, with his signature in the Algodones grant, and say whether or not in your opinion each of those signatures was written by the same person.

A. I think they were.

Q. 34. Mr. Forbes, you have compared the signatures of Jose Justo Milla, as the same appear and are found in the different books of record of the treasurer-general's office, as well as those of his signatures attached to the different original expedientes or matrix's of title  
200 examined by you, with his signatures as the same appear [21] upon the different papers attached to and being a part of the grant in the Algodones case; I will therefore ask you if, in your opinion, based upon such comparison and examination, and from your *your* knowledge of Spanish and Mexican documents and handwriting, the signatures of Jose Justo Milla, as the same appear on the several papers in this case, are his true and genuine signatures?

A. All of these signatures that purport to have been made by Jose Justo Milla seem to be in the same handwriting; the rubrics are all the same and written seemingly by the same person; only one signature where any difference is found is where the word "Jose" is written twice, but the paraph is the same; I would therefore say in my judgement if one are genuine the whole of them are genuine.

Q. 35. I will ask you. Mr. Forbes, to as briefly as you can, and in your own way, give a history of your understanding of the manner of making grants, concessions, or sales of public lands by the Spanish and Mexican authorities, or by the authorities of either of these countries.

A. From the knowledge that I have derived by study and my familiarity with the Spanish, I have found the manner of granting lands by Spain in the early period were as follows: Petitions were made  
201 by the applicant either to the viceroy or to the governor of the province [22], or to the chief authority. The application was forwarded to these authorities, who would order an examination of the land to be made, first, to find out whether the same was vacant or not; second, to know whether or not the same belonged to any individual, corporation, or pueblo; third, whether the applicant possessed the necessary qualifications that would entitle him to be heard on his petition. The report was then forwarded to the governor or to the viceroy. If agreeable, the grant was issued by the viceroy or by the governor of the province. In California only two grants were made by viceroy's; one made by Don Jose de Galvez, visitor general, made to Don Felipe Romero, for the entire district or country known as the Mission Lands of San Luis Gonzalzel; this was in 1776. The other was made by Viceroy Marquina, made to Mariano Castro, in 1802, which tract was named Las Animas la Brea.

The grants that were made by the governors of the provinces, Don Pedro Baca Vages, Don Diego Borica, Don Guiquin Arillaga; those by Pedro Faces were made in 1784; one to Manuel Perez Nieto, named Santa Gertrudes, for sixty-eight square leagues; one to Jose Dominguez for

twenty-two square leagues, named San Pedro; one made to Don Diego Borrica, named El Pilar, and others that I might name—Arrilaga, or All Saints Bay, and another of San Arrilaga, or All Saints Bay, and another of San [23] Tiaga to Jaun Pablo Grigalbo; these grants were approved by the commandant-general of the internal provinces, Don Jacobo Ugarte y Loyola, in July, 1786. Subsequently applications would be made to the audiencias, when all concessions made in these partitions had to be forwarded for approval to the audiencia of Guadalajara. The ordinance of intendants in 1786 required applications should be made to the intendant-general; afterwards, when the internal provinces were divided from those of the west, the subdelegates of the royal treasury took the place of the intendencias, and all applications had to be addressed to them. Grants were approved by the royal board of the treasury that existed at the capital of each province where there was an intend'cia. Lands were granted upon application by the intendant-general, who would order an examination of the land to be made, surveyed, and appraisement of its value, and be advertised for sale at public auction thirty consecutive days, after which the land would be sold to the highest bidder.

After the Mexican independance, the manner and mode of granting lands was not materially changed, but the form continued to be used and observed, even as late as 1838. The Mexican Congress passed laws for the distribution of vacant lands; lands were given gratis in the territories of the Republic of which the law of 18th of August, 1824, and the regulations of 21st of November, 1828. But the States did not make grants in that way; the lands of the States were not given away, but sold to the highest bidder in the same way that they had been alienated prior to the date of independance. The State of Sonora had its colonization law of 20th of May, 1825, and so did the State of Chihuahua. The grants that have been seen to-day seem to have been granted in accordance with the provisions of the colonization law of 25th and that of the 11th of July, 1834.

Q. 36. When you refer to the colonization laws of 25th of July, 1834, do you mean the colonization laws of the Republic of Mexico or the colonization laws of the State of Sonora?

A. By the law of 4th of August, 1824, the Supreme Government of Mexico passed a law defining what the revenues of the Government were, and left to the States all that source of revenue that was not mentio'ed in the law as belonging to the Federal Government, and that revenue which was not mentioned in the law as pertaining to the Federal Government was the revenue that could have been derived from the sale of public lands.

Q. 37. Prior to the enactment by the General Government of the law of August 4th, 1824, was part of the revenue that which was obtained from the sale of the vacant lands [25] in the colonization laws of the Mexican Government passed after the independance of Mexico, did the General Government attempt to dispose of any lands within the demarcations of the several States, or was the Government's disposition of vacant lands by its colonization acts confined to lands within the territories?



A. My understanding of the general colonization law was that the lands, when given in colonization, were given to the colonists gratis, and these lands were limited only to the Territories of the Republic, which were not free and sovereign.

Q. 38. Then, if I understand you correctly, your understanding of the colonization laws of 1823 and 1824, and of the other laws of the General Government relating to public lands, was that the States owned the lands within their boundaries and the General Government claimed ownership within the Territories?

A. Yes, sir; by consent of the General Government.

Q. 39. Was not the distinction between the colonization act of August 18, 1824, and the manner of disposing of vacant lands in the States, that the lands were given gratis under the colonization law, while under the procedure in the States they were sold?

A. Yes, sir.

205 Q. 40. Prior to the law of August 4th, 1824, was it not the fact [26] that there were no sales of the fee made, but that the juridical possession only was given?

A. Yes, sir; only a permit to occupy.

Q. 41. Then, under the law of August 4th, 1824, and of the States, the laws of the State of November 25, 1834, the proceedings amounted to a sale of the land fee?

A. Yes, sir; that is the way all the titles were issued or given. By the fifth condition contained in every grant that was made in accordance with the provisions of the act of October 18th, and August 24th, and article 5 of the regulations of 21st of November, '28, it was provided that if the party interested contravened the conditions that were stipulated in the grant he would forfeit his right to the tract so given, and it would be subject to denouncement by another party, and in the close of all grants made in this State it was stated that no person could molest or disturb the grantee, and that he should enjoy the full and absolute ownership of the land.

Q. 42. The law of August 4th, 1824, as I understand you, granted to the States the right to use the revenue from the sale of vacant lands?

A. Yes, sir.

206 Q. 43. Then the law of August 18th, 1824, known as the colonization act, gave the lands away gratis to settlements within the Territories of the Republic, but not in [27] the States?

A. No, sir.

Q. 44. It has no effect in the States whatever?

A. No, sir.

Q. 45. Were there not in existance, in August 18, 1824, Territories other than those of California and New Mexico?

A. I don't know.

Examination by Justice SLUSS:

Q. 46. Have you much acquaintance with the manner of making of these documents, which were called the matrix, in this State of Sonora?

A. They were nearly the same as those found in California, except in some particulars, in which they differ.

Q. 47. Well?

A. I have seen many grants of land made in Sonora that seemed to me to be in the same form.

Q. 48. Are these proceedings made from a memoranda, as the several acts which are recorded were performed, or were they made as an entire record after the proceedings were completed?

A. Each act was inserted in the expediente as the expediente continued, or proceedings continued.

Q. 49. Then, in your opinion, when an offer of a sale had been  
207 made and no parties appeared, a report to that effect [28] was made at the time and entered in this expediente immediately, before any other act was performed?

A. Yes, sir.

Q. 50. In your opinion, then, it was the act of August, '24, that the States derived its authority—was it the law of '24, or a law prior to that time?

A. The State of Sonora could not derive its right to the land from any Spanish law after the date of the independence; but my opinion is that it derived its power to sell the lands from the law of 4th of August, 1824, the act of August 18, 1824, from the general act enacted by the general congress on colonization, the general laws of missions.

Q. 51. Did the General Government exercise any powers over the land in the States after it had been granted by the States to anybody?

A. I don't believe they did, except the revenue that could be derived from those sources that are mentioned in the very law itself. Of course the source of revenue which the Government reserved are mentioned in the law, but no mention is made of revenue of the sales of lands as belonging to the General Government, but it says all sources of revenue not mentioned in that act shall belong to the States, and every paper that  
208 was shown to-day in the archives of this Government recite that [29] very law and the power that the Government of the State derived therefrom—the act of August 4th, 1824.

Direct examination—Continued.

E. M. SANFORD, Esquire:

Q. 52. Under this act of March 4th, 1824, and of the acts of 1825 and '34 of the State of Sonora, when a sale of land was made and the testimonio issued to the purchaser, did the fee pass or only the right of possession?

A. The fee, under a full ownership.

Q. 53. Then did that continue in the owner of the grant until it became denounced for want of compliance with some of the conditions therein contained, by some third person?

A. I do not remember whether any condition of that kind was embraced in the grants.

Q. 54. But if there were conditions attached to the grant so that the by the Government, or denouncement by third parties?

A. With reference to grants made under the colonization law of August 4th, 1824.

Adjourned until Monday, December 28, 1892.

It is agreed, for the purposes of this case only, that the several signatures of Jose Justo Milla (his name in full), as his name signed as Milla,

and other officers, photographed, and about which witnesses have testified, are genuine signatures upon public documents and records in the archives of the office of the treasurer-general of the State of Sonora, and are true and genuine. This agreement does not extend to the signatures attached to the papers in the Algodones and Sargento grants.

GUILLARMO H. ROBINSON, being first duly sworn, on behalf of the petitioners, testified in English as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and residence, and where do you reside ?

A. Forty-seven ; my name is Guillermo H. Robinson, attorney ; residence, Guaymas.

Q. 2. How long have you been a practicing attorney ?

A. Since 1881.

Q. 3. What official positions, if any, have you held in the State of Sonora ?

210 Everything. Member of Congress, judge of the first instance, mayor of Guaymas several times (am mayor [31] now), judge of the supreme court of the State, federal district judge.

Q. 4. How long have you resided in Sonora ?

A. I was born in Sonora, Guaymas.

Q. 5. Have you ever, at any time, made an examination of the archives in the office of the treasurer-general of this State ?

A. I have.

Q. 6. Have you done so for the purpose of making a comparison of the signatures of Jose Justo Milla and those mentioned in certain documents ?

A. Yes, sir.

Q. 7. For what years have you made those examinations ?

A. In the Sopori case, in the year 1881, for the years '33 to '40.

Q. 8. Since 1824, under what federal law, if any—up to 1840—what federal law, if any, has been the authority for making sales of lands ?

A. What federal law ? The law of August 4th, 1824. It is the law which grants the State the revenue derived from the sale of public lands, in article or section 11th.

Q. 9. I will ask you to state whether that book which you have 211 before you is recognized by the executive, judicial [32], and legislative departments of this country as being authoritative of the laws in force at that time ?

A. Yes, sir ; and upon which all decisions are based.

Q. 10. Please give the name of the book, volume, and page on which the law is found.

A. "Legislacion Mexicana, 8 Coleccion Complete de las Disposiciones Legislativas, por, Manuel Dublan and Jose Maria Lazano, official edition, volume first, page 710."

E. M. SANFORD, esquire. We now offer this law of August 4th, 1824, in evidence.

Q. 11. In this section 11, article 11 of that act, is used the word "rentas." Do you know what is the use—general use—of that word in the Spanish language ?

A. It is the revenue of the Government, or income either, from leased property, or other sources. It is the revenue of the Government.

Q. 12. Prior to the passage of that law, was no money derived from the sale of the land?

A. As a part of the revenue of the Government. The intendencias used to sell the land.

Q. 13. That was the authority; but was the money received from the sale as part of the revenues of the country?

A. Yes, sir; it was.

212 Q. 14. Do you know the law known as the colonization law of [33] August 18, 1824?

A. I have it before me.

Q. 15. Was it or not a federal law?

A. It was a federal law on colonization.

Q. 16. Do you know whether or not that law was ever construed, either in practice or otherwise, to apply to the States of Mexico, or did it apply solely to the Territories of the Republic?

A. It applied to the States, entirely on colonization, restricting the granting of more than eleven leagues of land within twenty leagues of the frontier States, or five leagues from the border of the waters of the sea.

Q. 17. Then this restriction only applied to certain distances on the frontier, and on the border of the water?

A. Here's what it says about it: Article 2nd of the law of April 25th, 1835, says: "That in the use of the authority reserved by the General Congress in section seven of the already mentioned act of August 18th, 1824, the bordering States and those on the seas are hereby prohibited to alienate or sell its waste lands for the purpose of colonization, until the rules are established for the way it shall be done."

Q. 18. What book have you just been reading from?

213 A. The same—Colonization Laws, volume 3, page 12 [34], number 1552.

Q. 19. Was there or not any limitation upon the power of the State to sell or grant its lands to any person having the means to take care for the same?

A. There was no restriction whatever, provided that the petitioner proved to the satisfaction of the granting officer that he had stock enough or cattle enough to stock the ranch.

Q. 20. Then the State had a right to grant as many leagues of land to any one person of means as it saw fit?

A. Yes, sir.

Q. 21. And did the State exercise that power and grant to one person more than eleven leagues, or as much as they would show to the granting officer that they had means to take care of?

A. Yes, sir.

Q. 22. Do you know whether or not this was frequently done after 1824?

A. It was done until the enactment of the law of July 20th, 1863, which restricted an individual to hold more than twenty-five hundred hectares, excepting in cases where he has had possession for over ten years.

Q. 23. Have you the law of Sonora and Sinaloa of May 20, 1825?

214 A. I haven't it here, but it is in my office at Guaymas. [35]  
Q. 24. Have you the law of July 11th, 1834?

A. I have it also in my office at Guaymas.

Q. 25. You may state whether you are familiar with the law of which this is a copy.

A. I am familiar with the law, and this copy was made in my office.

Q. 26. Is this a copy of the law applicable to the sale of lands in 1838?

A. Yes, sir; it is.

Q. 27. Was the law in vigor in 1838?

A. That is the only law covering the treasury department in vigor then.

Q. 28. For the sale of public lands?

A. Yes, sir.

Q. 29. Are you familiar with the practice of making grants, the proceeding for the sale of land under that law?

A. I was not present at the sales of any lands, but by information I know, and from an examination of the different grants, I know the form.

Q. 30. Will you please state to the court the manner of proceeding at that time for the application and sale of lands?

A. The party wishing to acquire lands presented himself in  
215 writing before the treasurer-general, giving a description of the land he wished to acquire, and, accompanying his petition, the written testimony of three or more witnesses to prove that he had cattle enough to stock the amount of land he asked for. The granting officer, the treasurer of this State, being satisfied of such testimony, the petition was admitted and a measurement of the land ordered to be made. The measurement being finished, the treasurer, the judge of the first instance, and the prosecuting attorney formed into a board called the "Juntas de Almonedas," and the land was published for thirty days to be sold at public auction, after which it was adjudicated to the petitioner by paying the price, according to a tariff in the law of 20th of May, 1825. I am not sure about the thirty days, but I think it was thirty days.

Q. 31. Do you know how the record of such a sale would be made up?

A. All of the proceedings which I have already mentioned were taken down on loose sheets until the whole of the proceeding was finished and then sewed up together, and the proceedings altogether were called "the expediente" and was the record of the grant. An authenticated copy of all the proceedings was then given to the grantee, to serve as title.

216 Q. 33. From your examination of these documents, how long a [37] period would they generally be before certified by the officers' signatures to the proceedings?

A. It entirely depended upon the time it took to finish the expediente, from three, four, five to six months; there are some grants here that were five or six years; that is generally on account of the Indians, the Apaches.

Q. 34. And the several papers were written up by some clerk and presented to the different officials and all signed at one single time?

A. Yes, sir. Where the land was bought at public auction, the clerk writes out the date and declaration that at that date it had been published for auction; after that is copied it is signed; therefore the whole of those thirty days are written up in one single day.

Q. 35. Then, when all these papers are put together you say they form the absolute record of the grant to the lands?

A. Absolutely. It is called the expediente or matrix, and is the record of the title.

Q. 36. What is the authority for the acting of this board of almonedas?

A. It was provided by general law of 17th of April, 1837, article 74. It says: This board shall be formed by the officials, which I have already mentioned—

Q. 37. Are the officials who shall comprise this board named in 217 the act? [38]

A. Yes, sir. The treasurer-general, the prosecuting attorney, the collector of rents, and the judge of the first instance.

Q. 38. Was the prosecuting attorney the "promotor fiscal?"

A. He was called the "promotor fiscal," or "fiscal de hacienda," which amounts to the same thing.

Q. 39. Is that an act of congress of the Republic of Mexico?

A. Yes, sir; general law of the Republic of Mexico.

Q. 40. And that, as I understand you, designates certain officials to preside at the sale of public lands at the various parts of the Republic?

A. Yes, sir.

Q. 41. Do you know how the treasurer-general was appointed or elected; whether by general or State authority?

A. The treasurer-general was appointed by the State's authorities.

Q. 42. How as to the other officials mentioned in that act?

A. All the State officers are appointed by the State authorities.

Q. 43. Do you know whether that act was ever amended or supplimented?

A. There is a law of 7th of December, 1837, authorizes the governors of the different States to have an intervention in the branch of the 218 treasury until the law of the 7th of April, already mentioned, be revised. [39]

E. M. SANDFORD, esquire. We offer these two laws in evidence.

Q. 44. Do you know the relation the Toma de Razon bore in 1837, in the archives of the treasury department in 1838? If so, state.

A. The Toma de Razon was a book kept as a memorandum of the different titles issued; or copies—by copies I mean, authenticated copies given of the expedientes or matrix's that existed in the treasury department.

Q. 45. Was it any part of the record of the title?

A. No more than it was for the information of the treasurer that they had been issued—and a matrix was usually made on the bottom of the title that it was registered in the Toma de Razon.

Q. 46. Was there any grants issued—from your examination—in 1838 which had not been noted in the Toma de Razon, and that lie within this State or that of Sinaloa, and are now in existence, as valid titles and recognized by the Government as valid titles?

A. There are several; I can give you the list. I examined the records in 1881, and found the following not mentioned in the Toma de Razon: Sahuaral, Huerta de Jalapa, La Cieneguita, Santa Gertrudes, Cendradas, La Pasion, Santa Ana, San Rafael del Carrizal.

Q. 47. In 1881, did you find that these were not mentioned in 219 the book called the Toma de Razon, for the year 1838? [40]



A. Yes, sir.

Q. 48. Were these grants of '38.

A. They were either '37, '38, or '39; I think they were within one year of '38.

Q. 49. They are not mentioned in the Toma de Razon corresponding to the date on which they were issued?

A. No, sir.

Q. 50. Do you know Jaun A. Robinson, mentioned in these proceedings?

A. I knew him; he was my father.

Q. 51. Do you know whether he held any official positions in this country, or for the American nation?

A. My father was an American citizen and held no position with the Mexican Government, but was for seventeen years American consul at the Port of Guaymas.

Q. 52. Where did he first reside in the State of Sonora?

A. In the State of Sonora, in the years '25, in the city of Alamos, where he married and moved to Guaymas in 1833.

Q. 53. How long thereafter did he continue to live at Guaymas?

A. To sixty-nine, off and on.

Q. 54. How old was he when he died?

A. Eighty-seven years and six months.

Q. 55. In what year?

220 A. He died October 17th, 1889, in San Francisco, State of California.

Q. 56. Did you know Fernando Rodriguez, petitioner for the Algodones grant?

A. Yes, sir.

Q. 57. How long and where did you know him?

A. I knew him when I was a boy, Fernando Rodriguez, I remember him well; I used to see him at Guaymas.

Q. 58. Do you know whether he was engaged in any business in this country at any time?

A. He was a merchant in this city.

Q. 59. Between what dates, within your recollection?

A. Of course, I could tell that by going over my father's papers, but I can not remember now; I remember very well though, because he used to come to Guaymas and buy goods from my father's store, who was a wholesale merchant and importer.

Q. 60. Then your father was engaged in merchandising at that time?

A. From the time he arrived there until he left Guaymas for California; the family went there first when he was in Europe, but his business was carried on for a few years after sixty-one.

Q. 61. What were the relations between Fernando Rodriguez and your father?

221 A. They were on friendly terms, acquainted and friendly.

[42]

Q. 62. Do you know whether Mr. Rodriguez was a man of means and good standing?

A. He was a man of very good standing, and a man of some means.

Q. 63. Did you see him at your father's place of business when a boy?

A. I recollect him well ; I can't say how many times ; I don't recollect.

Q. 64. Here matrix in the Algodones case is shown witness, and asked if he has ever seen that before, and where.

A. Yes, sir ; I have seen it here in the treasury department.

Q. 65. Have you ever made an examination of the signatures therein contained for the purpose ascertaining whether or not they are genuine?

A. I had occasion to see and compare this expediente and matrix with other expedientes and matrixs in the treasury department.

Q. 66. State whether or not, in your opinion, they are genuine.

A. I have not the least doubt that they are genuine.

Q. 67. Here testimonio is shown witness, and is asked if he has ever seen that before.

A. I have seen it before.

Q. 68. Do you know the signatures therein contained from your  
222 examination ? [43]

A. I have examined the signatures.

Q. 69. State whether or not, in your opinion, they are the genuine signatures of the person purporting to sign those documents.

A. Yes, sir ; they are.

Q. 70. Are you familiar with the seals used in the treasury department in the year 1838 ?

A. I know the seal only by comparison with other expedientes.

Q. 71. State whether or not they have the appearance of those on other documents made in that year.

A. It has, in my opinion.

Q. 72. Have you the law relating to the issue and destruction of stamp paper issued during that epoch ?

A. That epoch, yes ; that is not precisely the date, '38 ; but I have the law by which the paper was issued. I have the law ; it is dated November 23, 1826. This is a federal law.

Q. 73. I will ask you to state generally, what was the method of issuance and destruction of paper, and the use of paper.

A. At the expiration of the year for which the paper was issued, the private holder of the paper not used had the privilege to exchange it for new issue in thirty days, and according to article 21, of said law, it provides, "That all the surplus paper, after the year passed, should be  
223 destroyed in the presence of the auditor and the collector of finances, according to the law of [44] 26th of January, 1831, and for which purpose the governor's of the different departments of the States were encharged to collect all surplus paper, and to remit it to the general office in the City of Mexico, with great security. That it be the obligation of the official in charge of selling the paper to form and present to the respective governors, at the end of each month, an exact account of the moneys received and paid out, the balance on hand, and also a report of the sealed paper in stock, also of that which had been sold during the previous month." Article 18th of the law of 20th of January, 1831, which I have mentioned above, says : "That the seals will be kept in a vault with three keys, of which the superintendant will have one, the auditor one, and the other to the keeper of the seals ; and at the end of each fiscal year the seals will be destroyed in the presence of the auditor of the treasury department and said-mentioned employees."

Q. 74. Have you noticed the paper on which these documents—the expediente of the Algodones grant—is written?

A. Yes, sir.

Q. 75. State whether or not that is on the stamped paper used during the year or date upon which it purports to be issued.

224 A. The paper is the same that was used in other [45] expedientes—I see by examination, for the fiscal year of 1837 and '38.

Q. 76. Explain, from your examination and knowledge of the law, the possibilities of obtaining like paper in after years for the purpose of creating like instruments.

A. It would be a very difficult thing—almost impossible, and, in fact, impossible; and, I say, especially such a large amount of paper that has been used in the expediente of title in this case.

Q. 77. I will ask you how these seals are canceled when it becomes necessary to use them for other purposes, or are left blank without being used?

A. There is a provision that all books used in which accounts are kept shall have the first and last page certified by the official in charge to collect taxes for revenue, the number of pages, and by a rubric in intermediate.

Q. 78. So that when a book like this is created, there is a caption in the front page, conclusion on the last page, and at the same time each page is marked with a rubric, identifying that as being for the use of the official?

A. Yes, sir; and in the certificate on the first page it gives also the number of pages that the book contains; in this case, the book I have before me now is possessed of twenty-six pages, which corresponds  
225 to the certificate in the beginning. [46]

Q. 79. This is a book of the treasurer-general's office?

A. Yes, sir.

Q. 80. And the rubric used in that book would be the rubric of the same officials?

A. Yes, sir.

#### Examination by Justice MURRAY:

Q. 81. What power did the Federal Government, or General Government, of Mexico have over the property of the citizens in 1838?

A. No power whatever over the citizens; only so far compliance with the laws were concerned, &c., &c.

Q. 82. Suppose the land granted in 1838 to private citizens, did the General Government have any power over it; any control over it?

A. During this time that this grant was made, and after 1824, we were unsettled, and hardly knew where we were—under the central system sometimes, and then under the federal system, and these changes were so fast that by the time the State government concluded to act, and come over to the federal, it had been abrogated, and some of the States didn't adopt it at all.

Q. 83. I want to know, in the State of Sonora, what power had the General Government?

226 A. It had no power; section 11 of the act of August [47] '24 giving the right to the revenue from the sales of public lands to the States, only restricting to that of the central system, and that is a point I wish to tell you.

About the constitution, the question is whether the Government recognized this central system or not. My opinion, and that of the governor and others, is that it did not recognize it, because all the titles that were issued afterwards were issued exactly the same way, and reciting exactly the same laws, &c.

Adjourned until Tuesday, December 29, 1892.

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TUESDAY MORNING, *December 29, 1892.* [48]

Mr. GUILLARMO H. ROBINSON continued testifying, as follows :

Direct examination—continued.

By A. M. STEVENSON, Esquire:

Q. 84. Judge Robinson, I will ask you, if at any time, namely, April, 1838, of the sale or grant of the lands in this case to Fernando Rodriguez, the State of Sonora was acting as a free, independent, and sovereign State at the time of the grant?

A. It was a free, independent, and sovereign State, and was so acting at the time of the grant in this case, in April, 1838.

Q. 85. If I have correctly understood your testimony and your construction of the colonization laws of the General Government of August 18, 1828, such laws applied only to the free granting of the lands for colonization purposes, and did not in any manner apply to the sale of lands by the State to individuals who possessed the means required by the State laws. Will you be good enough to state if this is correct?

A. Perfectly correct.

Q. 86. Then, did the colonization laws of the General Government of August 18, 1824, place any limitation or restriction, so far as the amount of land that could be sold or granted to one individual is concerned, upon the State of Sonora, in selling land to individuals, [49] like the grant in this case?

A. It had nothing to do with it at all.

Q. 87. You are familiar with the effort of the General Government to pledge the vacant lands of the Republic to the National Banks. Be good enough to explain the character and nature of that transaction.

A. The General Government pledged to the National Bank all the lands in the whole territory of the Republic for the purpose of repaying the indebtedness. There was a law enacted to that effect, the date of which is January 11th, 1837. Section 3rd of said law is: "All the real estate or national property which exists in all the territory of the Republic shall be pledged to the National Bank." Then the law of April 17th, 1837, which formed the "Junta de Almonedas" for the purpose of having a supervision over the funds derived from such sales, and to be turned over to the National Bank.

Q. 88. Examine, if you please, this document, being a paper marked "Exhibit A," and being a part of the testimony taken in this case in May last, and supposed to be a correspondence between the treasurer-general of the State of Sonora and the Supreme Government relating to the grant or sale of the land to Rodriguez, and state whether or not such paper is a recognition of this [50] grant by the General Government, or in fact an approval of the same?

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A. If it is not an out and out recognition, there is a strong presumption, as can be noticed by the communication itself, and in which it gives the manner of giving these lands, and citing the laws of 17th of April and 7th of December, '37, and at the same time ordering that all titles in the possession of the National Bank agent at Sonora shall be returned to the treasury department.

Q. 89. Do you know who was the National Bank agent there?

A. Lawyer Manuel Marino Gaxiola.

Q. 90. From your familiarity with the history of this State, I will ask you to explain as best you can why, in your opinion, there was any correspondence between Mr. Rodriguez and your father with the Supreme Government relating to this particular grant?

A. On account of the different changes that had been going on between the central and federal systems.

Q. 91. Then as a matter of precaution to make the grant sure, and in order to secure the acknowledged legality of the expedient by either of the parties, in order to secure himself?

A. Yes, sir.

230 Q. 92. Judge Robinson, in the deposition of your father [51], taken in San Francisco, and now on file in this case, his testimony, which seems to have been copied, makes it appear that he testified in answer to one of the direct interrogatories propounded to him, as follows: "I knew Fernando Rodriguez in Hermosillo, Sonora, and in the port of Guaymas; I knew him since the year 1853." Again, in answer to another interrogatory, he testifies: "I received the original document expediente original from Fernando Rodriguez in 1847;" and in answer to a further interrogatory, "that Mr. Rodriguez handed him the expediente original at the time of selling the property to him," you will observe that there is a slight discrepancy in the testimony of your father relating to the time and year when his acquaintance with Mr. Rodriguez began. From your acquaintance with Mr. Rodriguez, and from your knowledge of your family history and the like, I will ask you to explain, if you please, this apparent discrepancy.

A. There is undoubtedly a mistake, because it is hardly likely that my father would have met Fernando Rodriguez after I did; from my recollection I must have been about eight years old when I first saw Rodriguez.

Q. 93. Then what in your judgment should this 1853 be?

231 A. I think my father, although I am not sure, met Mr. Rodriguez immediately on his return from Alamos in A. D. [52] 1833, and I think it should be 1833, as that was the time my father began residing in Guaymas.

Q. 94. Mr. Rodriguez was in business in Hermosillo and your father in the wholesale and importing business at Guaymas, and did they have business relations with each other?

A. Yes, sir. He knew Rodriguez, also, after my return from the United States in 1862 or '63.

Q. 95. Do you know the character of pens and inks used during the time that this grant was made? And if so please state the character of pens and their effect in writing.

A. Generally at that time and up to '50 and '54 we used to use quill pens, points cut with a penknife and sharpened according to the taste

of each writer, and the ink was homemade, made of brown sugar, old iron nails, and the bark of a tree called "huisache," and which made a very nice ink.

Cross-examination by Mr. WILL M. TIPTON :

Q. 96. Mr. Robinson, I want to call your attention in the original expediente of the title in the m'tter of the El Paso de los Algodones to the three signatures of Mendoza attached to the three orders of sale in that case, and found on the second page of leaf 14, both pages of 232 leaf 15 and the first page of leaf 17 of said expediente [53], and I would like to know whether you are familiar with these signatures?

A. Familiar with them by comparison.

Q. 97. Have you compared those signatures with the other signatures, which were admitted to be genuine signatures here?

A. Yes, sir; I have.

Q. 98. From what documents were the signatures from which you made the comparison?

A. In the archives of the treasury department.

Q. 99. How long ago did you make that comparison?

A. In May last—in May last with the expedientes in the treasury department.

Q. 100. Do you know what official position, if any, this man Mendoza occupied at that time of these three orders of sale?

A. From the document he was judge of the first instance in Arispe, in this State of Sonora.

Q. 101. What conclusion did you arrive at as to the genuineness of those three signatures?

A. It left no doubt at all as to the genuineness of them.

Q. 102. Are you directly or indirectly interested in the result of this suit?

A. Neither directly or indirectly.

Q. 103. Your father was at one time the owner of this property, was he not?

233 A. My father had the property transferred to him by the [54] Rodriguez family; afterwards he formed a company in California, called the Colorado Commercial and Land Company; afterwards, about a year afterwards, my father sold to Mr. E. M. Sanford, his interest.

Q. 104. Did your father purchase the entire interest of the heirs of Rodriguez?

A. Yes, sir.

Q. 105. At the time he made that purchase until he sold to the company which you referred to, he claimed to be the owner of this property?

A. He was the owner of the property up to the time the company was organized.

Examination by Justice SLUSS :

Q. 106. After the act of August 4, 1824, of the Republic was there any law requiring the sales made the authorities of the State to be approved by the authorities of the General Government?

A. Only in the epoch of the central system.

Q. 107. When was that?



A. First in '36, and then afterwards in '41, and off and on.

Q. 108. Can you state with certainty the periods covered by the central system?

234 A. The central system was declared in the Republic in [55] 1836—December 30, 1836, and the first organization of the Mexican territory into departments. This remained in force in Sonora until December, 1837, when General Urrea proclaimed against it, and ordered the State authorities to obey the constitution and the laws before the act of 30th of December, '36.

Q. 109. Who was he?

A. He was the governor of the department of Sonora under the central system, and in '37 he proclaimed against it; in December, '37, Congress met and the constitutional system went on.

Q. 110. By what act or authority was that done?

A. By force of arms of General Urrea.

Q. 111. How long did that condition continue?

A. Until after '41—until the '40s.

Q. 112. What happened then?

A. Urrea continued to be the governor after a short period, after which he asked for a leave of absence—taking charge of the constitutional government, Lieutenant-Governor Leonardo Escalantante, and this information can be found in the archives of the secretary of state department here.

Q. 113. Were the arms of General Urrea, arms of the Republic  
235 or the State of Sonora? [56]

A. You misconstrued my answer; there was no fighting.

Q. 114. In the fuss, then, General Urrea represented the State government and did not represent the General Government?

A. No, sir.

Q. 115. Was there any law directing the keeping of this book known as the Toma de Razon by the officials of the State by statutory enactment?

A. I will not be positive, sir; but I think the act of July 11th, 1834, regulates the keeping of a book called the Toma de Razon.

Q. 116. Was there any statutory law directing the manner of keeping the records of the expediente of the sale of lands in this State?

A. From time immemorial, and in the time of King, all these expedientes were kept as they are to-day, as can be seen in the archives in the treasury department of the documents of the same class, kept in the same manner.

Q. 117. Then I understand that the making of this expediente is a matter of ancient custom rather than statutory law?

A. Ancient custom and based, undoubtedly, on old Spanish laws.

Q. 118. Did any law of this State provide for the issuance of the original to parties of the testimonio?

236 A. Yes; the law of July 11th, 1824, in the part which refers to lands. [57]

Re-direct examination by Mr. E. M. STEVENSON:

Q. 119. When the State government refused to become a department of the General Government, and insisted in retaining its sovereign capacity, did it take such action by the reason of the constitution of the Republic declaring each of the States were free and independent States?

A. I can't state exactly what the proclamations were, but that exists in the archives of the secretary of state.

Q. 120. Was the right of the State of Sonora to sell lands of the character of those sold in this particular case ever questioned by the General Government or any other authority to your knowledge?

A. There were several laws enacted from time to time nullifying titles and grants given, but said laws were never taken any note of on account of these titles having been issued by officials authorized for the purpose, and thereby giving said laws that nullified those grants, retroactive effect, which, according to common law as well as the constitution, could not be.

Recross-examination by Mr. WILL M. TIPTON :

237 Q. 121. Do you know about how far it is from the city of [58] Arispe in this State to the junction of the Gila and Colorado rivers?

A. I have not the least idea.

Redirect examination by Mr. SANFORD :

Q. 122. Mr. Robinson, I will ask you to state whether or not, in any of these matrix's, wherever any entry is made, is not that the original record and evidence of the fact of such entry?

A. Yes sir; there is no other, except where money is paid, the entering in the book of accounts of the treasury.

Q. 123. Then when the entry is made in such books, are they not taken from the entries in the matrix; that is, of moneys paid as purchase money?

A. The document, by it, appears that money has been paid, in the expediente's and is a true copy of that in the book, and there are certificates that in a certain book a certain entry is found.

Witness excused.

DIEGO ESCALANTE, being first duly sworn on behalf of the petitioners, testified, in Spanish, as follows :

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire:

238 Q. 1. Where do you live? [59]

A. Have lived at Hermosillo all my life.

Q. 2. What official position, if any, do you hold?

A. At present I am second official of the secretary of the state government, in charge of the statistics department.

Q. 3. State whether or not you are World's Fair Commissioner?

A. Yes, sir; I am for the State of Sonora appointed, and president of the commission in the State of Sonora.

Q. 4. Do you know Leonardo Escalante?

A. He was my father.

Q. 5. Do you know whether or not he was ever governor of Sonora at any time?

A. Yes, sir; he was vice-governor of the State, and acting governor of the State about 1838.

Q. 6. Please examine this document attached to the testimonio in the Algodones case and state whether or not you know the signature appended thereto?

A. This is the signature of my father; there is no doubt of it.

Q. 7. Was your father the governor of Sonora in 1838?

A. Yes, sir; he was vice-governor, but at that time he was acting governor in the absence of Governor Urrea.

Q. 8. Are you familiar with the archives and records of the various departments of the government of Sonora?

239 A. No, sir; I am not. I have only recently come into the secretaries' office, and I know very little of the [60] archives.

Q. 9. When did your father die?

A. In the spring of 1851, at San Francisco, California.

No cross-examination.

MANUEL FERREIRA, being first duly sworn on behalf of the petitioners, testified, in English, as follows:

Direct examination by E. M. SANFORD, Esquire:

Q. 1. Please state your name, residence, and occupation.

A. Manuel Ferriera; merchant; Hermosillo.

Q. 2. Do you hold any official position in the State of Sonora? If so, what position?

A. Vice-judge of the supreme court of the State.

Q. 3. How long have you held that position?

A. For eight years.

Q. 4. Are you familiar with the manner of selling or granting lands by this State, and have you any business of a personal nature relating to such matters?

A. Yes, sir; I am familiar with them.

Q. 5. Have you had in your business been from time to time connected with any grants of lands made in this State?

A. Yes, sir.

Q. 6. Have you had occasion to examine any of the records of the treasurer-general's office?

240 A. Yes, sir. [61]

Q. 7. Have you examined the record of the paper I now hand you, being the original expediente of the title in the Algodones grant?

A. No, sir; I have not; I have never seen it before.

Q. 8. Please examine that paper or document.

(Witness examines.)

Q. 9. From your knowledge of the manner of granting or selling lands in this State, do you recognize that document as being in the usual and ordinary form of such documents?

A. In my opinion it is in the usual form.

Q. 10. Would you say, from your knowledge of documents of this character, whether or not it is a genuine document?

A. I can say it is a genuine document.

Q. 11. Have you, in your experience as one of the judges, ever known of any grant of land made by the State of Sonora, the title of which was in the archives of the State, having ever been questioned by any authority as to their genuineness?

A. I have never heard it questioned.

No cross-examination.

VICTOR AQUILLAR, being first duly sworn on behalf of the petitioners, testified, in English, as follows :

241 By Mr. E. M. SANFORD : [62]

Q. 1. You have been examined already in this case as a witness ?

A. Yes, sir.

Q. 2. And you are treasurer-general of the State ?

A. Yes, sir.

Q. 3. I will ask you to examine paper marked Exhibit C, filed in this case on the 27th of May last, for the purpose of indentifying the signature of José de Aguilar therein. - Whose signature is that ?

A. My father's signature.

Q. 4. Was he governor of the State of Sonora at the time of signing that document ?

A. Yes, sir ; he was.

No cross-examination.

ROMAN CORRAL, being first duly sworn on behalf of the petitioner, testified, in Spanish, as follows :

Mr. , interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. Please state your name, age, and what, if any, official positions you hold in this State.

A. Roman Corral ; thirty-nine years old ; secretary of state ; member of the national Senate.

Q. How long have you held the position of secretary of state ?

242 A. He was secretary of state during the period of the year [63] '78 ; afterwards he left the secretaryship to go to Congress and returned to secretary in 1882.

Q. 3. Are you not now a member of the national senate ?

A. Yes, sir.

Q. 4. Please state how long you have been a member of the senate or a member of the Congress of the nation.

A. I have been a representative for three periods of two years, and have been reelected at the election of July of this year.

Q. 5. What position, if any, did you hold in the State of Sonora prior to the time when you first entered upon your duties as secretary of state.

A. I was State representative in the State of Sonora, and was afterwards secretary of state.

Q. 6. Have you had occasion to examine archives and records of the State of Sonora in the office of the treasurer-general ?

A. I have examined the archives of the treasurer-general's office, and particularly the archives of the secretary of state.

Q. 7. Have you made such examinations frequently or otherwise ?

A. Very frequent, almost every day.

Q. 8. In addition to the ordinary duties of your office, for what purpose have you made examinations of the public [64] records ?

243 A. I have studied the archives, and wrote an account of all the public administrations during General Torres' administration from 1883 to 1887, and was obliged to study the archives in order to get data to form this account, also for the object of writing a biography of General Pesquine, who was governor here for many years.

Q. 9. In such examination of the records, did you become familiar with the signatures of José Justo Milla, José Maria Mendoda, Florencio Mendoza, Francisco Mendoza, José Carrillar, Manricio Carrillo, Leonardo Escalante, José D. Aguillar, Ignacio Pesqueira, as the same are found upon the public records and documents in th' several departments of this State government?

A. I am acquainted with some of these signatures better than others; I have seen them all in the documents that I have examined.

Q. 10. Are you well acquainted with the signatures of José Justo Milla, José Maria Mendoza, Leonardo Escalante, José D. Aguillar, Ignacio Escalante?

A. I am acquainted with them.

Q. 11. Examine, if you please, the paper that I now hand you, being the original expediente of title to the land granted to Fernando Rodriguez in this State in 1838, known as the El Paso de los Algodones grant, and State whether or [65] not that is a genuine expediente for the sale or grant of lands.

A. This expediente and survey of the Algodones land in favor of Fernando Rodriguez for five sitios of land and this expediente and survey of the land constitute the title to the same.

Q. 12. Are the signatures of the several officers that appear upon this expediente original, that you are familiar with, their true and genuine signatures?

A. Of those I am acquainted with, they are the genuine signatures of P Carrillo, Fernando Rodriguez, and José Justo Milla; those are genuine; the others I am not acquainted with.

Q. 13. Examine, if you please, the signature of Ignacio Pesqueira, on Exhibit D, filed in this case in May last, and ask him if that signature is his true and genuine signature.

A. Yes, sir.

Q. 14. Please examine Exhibit number B 2, filed in this case on December 22, 1879, by John Wasson, surveyor-general, and state if the signature of José Maria Mendoza thereto is his true and genuine signature.

A. Yes, sir.

Q. 15. I will ask you to examine Exhibit B 1, filed in this case on December 22, 1879, and on the 27th of May last, and state if the signature of José Maria Mendoza thereto is his [66] true and genuine signature.

A. Yes, sir.

Q. 16. Please examine Exhibit D, about which you have already testified, and state if the signature thereto of Jose Maria Mendoza is his true and genuine signature, and if the body of the instrument is in his handwriting?

A. Yes, sir; it is his signature and the body of the instrument is written by him.

Q. 17. Examine Exhibit C, filed in this case on the 27th of May, 1892, and state of the signature of Jose D. Aquillar is his true and genuine signature?

A. Yes, sir.

Q. 18. Please examine the signature of Leonardo Escalante, attached to the testimonio in this case, and state if that is his true and genuine signature?

A. Yes, sir; it is.

Q. 19. Please state whether or not the State of Sonora was in April, 1838, acting as a free, independent, and sovereign State and transacting its public business as such?

A. More or less from January, 1838, the State was a free and sovereign State, and formed a part of the Federal Mexican Republic, as it is now; it was a sovereign State for its local administration, but dependent  
246 upon the Federal Government for certain public affairs. [67]

Q. 20. Then the situation, so far as independence of the State and the manner of doing business, was the same in 1838 as it is now?

A. It was similar, but not entirely the same; because at that time it was governed by the federal constitution of 1824, and now is governed by the constitution of 1837, which is a little different from the other.

Cross-examination by Mr. WILL. M. TIPTON:

Q. 21. Did you ever see the expediente in the matter of the El Paso de los Algodones grant before to day?

A. I do not recollect of having seen it before, but I might have seen it during the examination of the different documents here when they were being arranged and put on file, two or three years ago, but if at that time I saw it I do not recollect it.

Q. 22. Then you have never made a critical examination and comparison of the signatures of Jose Justo Milla, Fernando Rodriguez, Moricio Carrillo, upon this expediente, with other signatures of these parties, which were admitted to be genuine, with a view to determining the genuineness of those on the Algodones expediente?

A. I say these signatures I have seen are genuine by the [68]  
247 recollection I have of the many signatures of these parties that I have seen on the different documents in the archives, but I have not made critical examination of these signatures I have seen with others held also as genuine, of these gentlemen with the exclusive object of determining if they are or not genuine.

Witness excused.

GUILLARMO H. ROBINSON recalled, on the part of the petitioners.

Direct examination by Mr. SANFORD:

Q. 124. I will ask you to please read the note found on the second page of leaf 51, and also the continuation on the first page of leaf 52, in the book known in this case as the Toma de Razon?

A. "Note:—The titles of lands that shall be given from this date on, will be signed and authenticated by the Mr. treasurer-general of the State, on account of the government of this department having declared itself to-day in favor of the federal institutions; establishing itself in consequence according to the private laws of the treasurer-general and doing  
248 away with the gefature superiora hacienda (chief of the federal treasury department in the State), and which was enacted by general decree of the 17th [69] of April last. Arispe 26th of December, 1837. Signed, Trelles."

Adjourned until Wednesday morning, November 30, 1892.



WEDNESDAY MORNING, *November 30th.*

JOSE MENDOZA, being first duly sworn on behalf of the petitioners, testified in Spanish, as follows :

Mr. Manuel Ferreira, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. State your name ?

A. Jose Mendoza.

Q. 2. What is your profession ?

A. Public officer, attorney for the poor people in the supreme court of the State.

Q. 3. Are you in any manner related to Jose Maria Mendoza, who was for many years treasurer-general of the State of Sonora ?

A. He was my uncle.

Q. 4. Are you acquainted with his signature ?

A. Yes, sir.

Q. 5. I will ask you to examine Exhibit D, filed in this case 249 on the 27th of May last, and state whether or not the body of that instrument is in the handwriting of Jose [70] Maria Mendoza, and if his signature thereto is true and genuine.

A. I know perfectly ; it is the writing and signature of my uncle.

Q. 6. I will ask you to examine expediente No. a, filed in this case 27th of May last, and state whether or not the signature of Jose Maria Mendoza thereto is his true and genuine signature.

A. It is.

Q. 7. I will ask you to examine Exhibit E, filed in this case on 27th of May last, and state whether or not the signature of Jose Maria Mendoza is his true and genuine signature.

A. Yes, sir ; it is.

No cross-examination.

EDUARDO CASTANEDA, being first duly sworn on behalf on the petitioners, testified in Spanish, as follows :

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and where do you reside ?

A. Age, fifty-two ; lawyer ; residence, Hermosillo.

Q. 2. How long have you been in the practice of law ?

A. Since '62. I have practiced my profession in Flaxcala, 250 Durango, and Hermosillo. In my profession as a lawyer [71] I have held judicial positions, supreme court justice of the nation, judge of the first instance in the criminal branch in Durango and Hermosillo, president of the supreme court, justice of said Flaxcala ; fourth judge in th' criminal branch in the capital of the Republic, prosecuting attorney for the supreme court of Mexico, of the federal district in Mexico, and president of one of the halls of appeal of the same tribunal, and magistrate of the civil "cusacion," and the president of the supreme court and justice of this State of Sonora.

Q. 3. State if you have made a special examination of the laws relating to the sale or granting of lands by the State of Sonora since 1824 ; and, if so, state your knowledge thereof ?

A. I have, and the State of Sonora had ample legal power and authority to dispose of its public lands in the manner provided by its own laws; the reason is that the State of Sonora did not have its sovereignty and rights limited only as far as the authority and rights it delegated to the congress of the union, and this is proven by article first, second, 109, section 31 article 293, of the constitution of the State, made on the 21st of October, '25, sanctioned and promulgated on the 2nd of November, 1825.

251 This constitution was enacted for the State of Occidente, composed of the States of Sonora and Sinaloa. The [72] limitation of those rights are found in the laws of the federation, in the part which refers to lands, and found in the law of classification of rents for revenue dated 4th of August, 1824; that law does not name among the revenues of the Federal Government the revenue proceeding from the sale and products of the vacant lands, and consequently these lands belong to the State, according to article 11 of the same law. Said law, as can be seen in its article 9th and 10th, does not treat exclusively on taxes, but as well of the property belonging to the Federal Government, and one as well as the other are composed under the name of "rentas."

The State has always been exercising the authority to dispose of and legislate on the vacant lands without opposition from the Federal authorities, and this is proven by the laws enacted by the General Congress, in which, in an implicit manner, is recognized the authority that the States had to dispose of its public lands. "Decrete de 21 de Septiembre de 1824, sombre de Administracion de la Hacienda Publica y los Estados." Said decree places under the administration of the general commissaries the taxes and all the revenues of the property of the Federal Government, and

252 in articles four and five are there enumerated. And it is seen that there are not included the vacant [73] lands precisely, because they belonged to the States. The decree of 16th of November, 1824, arranges the admin'stration of the public treasury of the nation, and omits, absolutely, to say anything about vacant lands, notwithstanding, speaking and enumerating all other taxes and revenues. In virtue, therefore, of the authority that the State had to dispose of its vacant public lands, it issued several laws and amongst others that of July 11, 1834, and it is seen clearly the way that it disposed of the lands—to sell them. That in virtue of that authorization, and according to that law, the title of the El Paso de los Algodones was issued by the treasurer-general of the State of Sonora.

The only limitation that the States had to dispose of its public lands is that of not being authorized to colonize them, except under the basis that the decree of 18th of August, 1824, establishes; but this decree refers exclusively to colonization. By colonization, I mean to give them and to establish there what we understand a colony or union of individuals that come from other parts to settle. But that law did not prohibit absolutely the State to sell to us Mexicans any of that land. This is con-

253 firmed by the fact that the Congress of the Federation declared null some of the dispositions of the [74] State on colonization, notwithstanding it did not declare null the laws of the same State, in virtue of which it disposed of said vacant lands in other ways. (Decree of 21st of February, 1824, which declared null a decree of the general legislature of Coahuilla and Texas on account of having been enacted on

colonization. Decree of 14th of May, 1851, which declared null a decree of the legislature of this State of Sonora on colonization.) From these decrees deduction is made that the limitation on the State only refers to colonization, and that they could dispose of it in other ways—its public lands. That all this is confirmed by our public right, according to which no one doubts of the validity of the alienations as that of the Algodones—

(Here witness discontinues to allow the governeoe to testify.)

General LUIS E. TORRES, being first duly sworn on behalf of the petitioners, testified in English, as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and residence ?

A. My name is Luis E. Torres ; my age is forty-nine years ;  
254 my residence actually, Hermosillo. I divide my time be[75]tween Hermosillo and exc. Lower California.

Q. 2. How long have you resided in Mexico ?

A. With the exception of a short trip abroad, I have always resided here.

Q. 3. What is your political office in the Republic of Mexico, and how long have you held it ?

A. My actual positions : Governor, and governor-elect of the State of Sonora, political chief and military commander by appointment from the Federal Government, in the northwest district, and, besides, I am senator, elected, to the National Congress.

Q. 4. How long have you held these positions, and for what period ?

A. From January, 1888, with the exception of my office of senator, of which I am now on my second period. Of course, my election as governor of Sonora dates from last year's election. I took the office on the first of September of last year—that is my last election governor but I have been governor of the State on previous periods.

Q. 5. How long have you held public offices in this State or Republic, and what periods ?

A. In the State of Sonora from '79.

Q. 6. As such officer are you familiar or not with the various archives of the departments in this State ?

255 A. Only through my officers, not personally. [76]

Q. 7. Have you seen various archives or expedientes of title in the archives of your State ?

A. I have seen some.

Q. 8. You may take this expediente in the Algodones case and state whether or not that is an original record in the archives of this State.

(Witness examines closely.)

A. I think so.

Q. 9. From your knowledge of the manner of doing business in this State, and your acquaintance with the archives of the same and the records, I will ask you, in your judgement, the document you have just examined, namely, the matriz in the Algodones grant, is a true and genuine document ?

A. Yes, sir ; I think it is.

Cross-examination by WILL M. TIPTON, Esq. :

Q. 10. General Torres, when did you first see the expediente in this case?

A. Just now.

Q. 11. Are you familiar with the signature of Jose Justo Milla?

A. No, sir.

Q. 12. Have you ever made any comparison of the signatures  
256 of any of the officers who took part in the proceedings relating to the granting of that land, with a view to ascertaining the genuineness of their signatures?

A. I have not.

The governor excused.

EDUARDO CASTANEDA, heretofore examined—continued (from page 74) :

A. — were made by the authorities of the States, under the federal system by virtue of its own powers. (For instance, article 2nd of the decree of 3rd of December, 1855.) The said title of algodones is issued in entire conformity with the provisions of said law of the State of the year 1834. The understanding that the Huntas de Almonedas, or board of Almonedas in charge to make sales, met in virtue of these provisions of the Spanish laws that remained in force, in accordance to the same law of 1834, in order that it did not pass to the new institutions adopted by the State.

The decree of 25th of November, 1853, affected in no way the validity of titles issued by the States under the federal system that never had application, and neither the very tribunals existing in the same epoch in which the law was issued, never would have applied to it, as to the  
257 titles issued by the States according to its own laws [78], because said decree contains provisions with retroactive effect, and provisions with retroactive effect do not apply, nor have they been applied by the Mexican tribunals, because they are null—*ipso jure*. According to civil law in vigor in the epoch of the Spanish Government, and in conformity to the constitutional laws of the years 1824, 1836, and 1843, according to which the inhabitants of this country have the guarantee of not being tried by laws, *ex post facto*. For this reason there can be no doubt that the decree of the 25th of November, 1853, does not affect the validity of the titles issued in the epoch of the federation.

In conclusion, this title is entirely valid and has been issued legally by the authorities of the State in April, 1838.

Cross-examination by Mr. WILL. M. TIPTON :

Q. 4. Was the government of the State of Sonora at any time after its establishment changed to a departmental government, or, in other words, has the State of Sonora at any time, to your knowledge, been a department of the Republic?

A. It has been made a department of the Republic in some time.  
258 Q. 5. What date? [79]

A. From 1836 to 1837 it was a department; it was also a department from '53 to '54, but at the time this title was issued it was a State.

## Examination by Justice SLUSS :

Q. 6. I call your attention to the expression in article 3 of the law of August 18, 1824, as follows: "conforming themselves to the regulations established in this law," and ask you, in your opinion, whether that would include the provision of section 11, to the effect that no person should be permitted to receive more than eleven square leagues of land?

A. This law refers exclusively to colonization; that is to say, it prohibited the States to give more than that expressed in article 12 to the colonists that come to settle the vacant lands, but it did not limit the authorization or power which the States had according to their own laws to sell to any Mexican a large extension of land.

Q. 7. In view of the opinion you have given what is your construction of the provision of section 9, to the effect that preference should be given in the disposition to Mexican citizens?

A. This law, as I have already expressed, refers to colonization, and in article 9th refers to the preference that shall be given to the Mexican citizens when they shall [80] have come to form colonies in the State of Sonora, or any other State.

Q. 8. Is it not a fact that the title to all the vacant lands as between the State and the Federal Government was originally vested in the Federal Government?

A. From the moment that the nation entered into the federal system that right originally belonged to the States as owners of their own territory, in the quality of free, independant, and sovereign States, with no further limitation than the powers and rights delegated by the States to the Congress of the Union.

Q. 9. By what instrument were those powers and rights delegated to the Federal Government?

A. By the federal constitution and also by the laws enacted by the constitutive Congress, among which it is found that of August 4, 1824, in the part of which refers to lands, and that of the constitution of the State, "section" 16th, article 293, page 84, which says: "The revenue which the Federal Government did not reserve for itself by decree of classification of 4th of August, 1824, are those that, until this date, have formed the elements of which the treasury of the State is composed of." The date of this constitution is 31st of October, 1825, and published on 260 the 2d of November of the same year. [81]

Q. Had the State the authority to absolutely alienate its land without the consent of the Federal Government?

A. It had.

Witness excused.

BARTOLOMÉ ROCHIN, heretofore examined, recalled, and continued.

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 44. Was Manuel Telles treasurer-general of the State of Sonora in July, 1881?

A. Yes, sir.

Cross-examination by Mr. WILL. M. TIPTON :

Q. 45. How long have you lived in Hermosillo ?

A. Five years.

Q. 46. Were you employed in the office of the treasurer-general of the State of Sonora at any time prior to your appointment to your present position ?

A. I was employed in the law department, but not in the treasury department—and as a judge in Arispe.

Q. 47. Mr. Rochin, please examine expediente in the matter of 261 the de los Positos, and state whether there is anything [82] in that expediente to show that the lands were ever offered for sale and sold by the government of the State of Sonora, as the lands are alleged to have been in the Algodones case ?

A. That is not the same as that of the Algodones, because the land was not petitioned for, but merely petitioned to have it remeasured on account of the original title having been lost.

Q. 48. Then, so far as you know, Mr. Rochin, the title to the lands in the question in the Rancho de los Positos was perfected at some time prior to these proceedings, and this was simply a petition asking for lands to be surveyed ?

A. Yes, sir.

Q. 49. Then you would not expect to find an entry in the book of Toma de Razon for that ranch, would you ?

A. Why not ? Because, by the simple petition of there measurement the title is perfected.

Q. 50. Is there any other book of Toma de Razon on land titles in the office of the treasurer-general of Sonora, covering a portion of 1838, other than the book which was presented to you on your examination in chief ?

A. None other ; I do not know of any other book.

Q. 51. Did you ever see any other book of Toma de Razon 262 covering any portion of 1838 since you have been connected with this office ?

A. No, sir.

Q. 52. Do you know how many grants were made by the State of Sonora during the year 1838 ?

A. I do not.

Q. 53. Didn't I understand you to say in your examination in chief that the book of Toma de Razon for April, 1838, was missing from this office ?

A. Yes, sir. I repeat again what I have said, that I know that the book of Toma de Razon corresponding to the month of April, 1838, was lost from this office.

Q. 54. Was it the custom to keep a book, Toma de Razon, for each month in the year ?

A. No, sir ; because in many of the expedientes made, have the notation of Toma de Razon at the bottom of them, and which I can show many of them, in which it says that the title was issued.

Q. 55. Do you know, of your own personal knowledge, that there ever was a book of Toma de Razon for the month of April, 1838, in the office of the treasurer-general of this State ?



A. I am not able to say, because when I received the archives the book did not exist here.

Q. 56. Please examine book *Toma de Razon*, beginning in the year 1831 and concluding in the year 1840, and state whether or not it is a fact that the most of that book is written upon stamped paper, bearing the year 1831 and 1832, [84] and a portion of it on paper bearing no stamp?

A. Precisely; the greater part of the book is written upon sealed paper, and the latter part of the book is on the common white paper without stamp.

Q. 57. Please examine paper referred to by you in your examination in chief, and said to have been written by Manuel Telles, and state whether that paper is signed by him or any one else.

A. I have already examined it; it is not signed by anybody because it is a "parrador" which is found in the archives of the treasury department.

Q. 58. Does it bear any date?

A. It is July, 1881.

Q. 59. Is there a seal upon it?

A. It has not.

Q. 60. When did you first see that paper in the treasurer-general's office?

A. I found it while looking for some expedientes in June or July of this year.

Redirect examination, E. M. SANFORD, esquire.

Q. 61. When does this document have the appearance of having been made up, signed by Jose Maria Mendoza and annexed [85] here on leaf 68 and signed by Jose Maria Mendoza?

A. Here in the first page of the book, take note of the titles issued.

Q. 62. Was it not then the case, the note or toma of the issuance of the title was written upon the original expediente?

A. I have found several expedientes that have that notation upon them.

Q. 63. Examine the original expediente in the *Algodones* case and state whether that (indicating) or not is the original note or "toma" of the issuance of the grant?

A. The note of the *Toma de Razon* in the expediente before me is here —on leaf 17, second page.

Q. 64. Is that the original entry or note of the issuance of the grant in the *Algodones* case?

A. This the original *Toma de Razon* (note) in the original expediente of the *Algodones* grant.

Q. 65. This note or *Toma de Razon* of the original expediente of the title in this case is upon the original expediente or the second leaf of page 17?

A. Yes, sir; and reads as follows:

(Interpreter reads:) "On the 12th day of April, 1838, there was issued by this treasurer-general in favor of Mr. Fernando Rodrigues, the corresponding title of five sitios of land, of farming land, which is

comprised in the place [86] called El Paso de Los Algodones, on the river Colorado and in front of the confluence of this with the Gila, and on which this expediente refers to.

(Signed)

MILLA.

Witness excused.

This was all the testimony taken at Hermosillo, Sonora.

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*Depositions taken at Guaymas, Sonora.* [87]

DECEMBER 1, 1892.

Mr. J. A. FORBES, witness heretofore examined, recalled on cross-examination.

By WILL. M. TIPTON :

Q. 55. Please state when you first saw the original expediente in the Algodones case in the office of the treasurer-general of the State of Sonora?

A. On the day I arrived at Hermosillo.

Q. 56. And is that the same day on which you have your testimony on your examination in chief?

A. The day before.

Q. 57. Are you familiar with the signature of Jose Justo Milla?

A. Not any more than by examining the paper.

Q. 58. Then do I understand that you never have seen his signature until you saw it on the expediente of the Algodones case?

A. Yes, sir.

Q. 59. Is it not true that your opinion as to the genuineness of the signature of Jose Justo Milla in the expediente of the Algodones case is based rather upon the fact that you believed that a presumption of the genuineness of those signatures arose from the expediente being  
267 found in the public archives, rather than upon any examination or comparison [88] that you have made with others admitted to be genuine?

A. My opinion concerning the genuineness of the signature of Jose Justo Milla, as it appears on the expediente of the El Paso de los Algodones land grant, is based upon the fact that other signatures of the same person found in the archives in other expedientes, which are not questioned as to their genuineness, were in the same handwriting, and also because I consider all signatures found in the Government archives, which are reputed and considered by the Government authorities to be genuine, also genuine.

Witness excused.

DECEMBER 2, 1892.

LEONCILAS ENCINAS, being first duly sworn on behalf of the petitioners, testified in Spanish as follows:

Mr. H. Haile, interpreter.

Direct examination by E. M. SANFORD, Esquire:

Q. 1. What is your age and place of residence?

A. Fifty-nine years; residence, district of Altar, Sonora, Mexico; business, a cattleman.

Q. 2. Were you acquainted with Jaun Jose Encinas during his  
268 lifetime? [89]

A. Yes, sir; he was my father.

Q. 3. When did he die?

A. On the 8th of January, 1865.

Q. 4. Are you acquainted with his handwriting?

A. Yes, sir; and his signature, also.

Q. 5. I will ask you to examine Exhibit B, filed in this case on the  
27th of May, last, and state whether or not the instrument is in the hand-  
writing of your father, Jaun Jose Encinas?

A. Yes, sir; it is.

Q. 6. Is the signature of Juan Jose Encinas thereto your father's true  
and genuine signature?

A. Yes, sir.

Q. 7. Will you state if you are acquainted with the handwriting of  
Jose Maria Mendoza?

A. I knew him and knew his handwriting.

Q. 8. I will ask you to examine the paper marked Exhibit D, filed  
in this case on the 27th of May, last, and state whether that paper, or a  
page thereof, is in the handwriting of Jose Maria Mendoza, and if his  
signature thereto is his true and genuine signature?

A. Yes, sir; it is.

Q. 9. I will ask you to examine the paper marked Exhibit E,  
269 filed in this case on the 27th of May, last, and state whether or  
not the signature of Jose Maria Mendoza is [90] his true and gen-  
uine signature?

A. It is.

Q. 10. I will ask you to examine the paper marked Exhibit A, filed  
in this case on the 27th of May, last, and state whether the signature of  
Jose Maria Mendoza is his true and genuine signature?

A. Yes, sir.

Q. 11. Are you acquainted with the handwriting of Ignacio Perqueira?

A. Yes, sir.

Q. 12. I will ask you to examine the signature attached to the paper  
marked Exhibit D, filed in this case on the 27th of May, last, and  
state whether or not the signature of I. Pesqueira thereto is his true and  
genuine signature?

A. Yes, sir; it is.

Q. 13. Please state whether or not the writing above the signature and  
on the page is in the handwriting of Governor Pesqueira?

A. I am not positive about that.

No cross-examination.

AUGUSTU BUSTAMENTE, being first duly sworn, testified in Spanish  
as follows:

270 Direct examination by E. M. SANFORD, Esquire: [91]

Q. 1. State your age, residence, and occupation.

A. Sixty years old; residence, Guaymas; business, a merchant.

Q. 2. How long have you lived in Sonora?

A. Since I was born.

Q. 3. What, if any, official positions have you held in this State?

A. I have held none.

Q. 4. Did you know Governor Pesqueira?

A. Yes.

Q. 5. Are you acquainted with his handwriting?

A. I have seen it many times.

Q. 6. Please examine Exhibit D, filed in this case on the 27th of May, 1892, and state whether or not any portion of that document, on the last page, is in the handwriting of Mr. Pesqueira; and, if so, what portion?

A. I think that is Mr. Pesqueira's signature. It is the same as all his signatures.

Q. 7. Are you acquainted with the signature of Governor Aguillar?

A. I have seen it many times.

Q. 8. Please examine Exhibit C, filed in this case on the 27th of May, 1892, and state in whose handwriting the words Jose D. Aguillar are written?

A. It is the same as in the case of Mr. Pesqueira's signature.  
271 I think it is Aguillar's signature. [92]

Q. 9. Was Jose D. Aguillar a relative of the founder of this mercantile house?

A. Yes, sir; he was a brother.

Q. 10. Are you acquainted with the handwriting of Jose Maria Mendoza; and, if so—

A. I have seen it in several documents, but I am not perfectly acquainted with it.

No cross-examination.

This was all the testimony.

It is hereby stipulated and agreed by and between the parties hereto that the testimony of the several witnesses who have testified and whose testimony has been taken by L. F. Parker, jr., the official stenographer of this court, in shorthand, may be extended in longhand, or on the type-writer by said stenographer, and when so extended and authenticated by him, the same shall be filed and considered as a part of the testimony in this case, without the witnesses so testifying signing the same, and there shall be no objection made by either party on account of the testimony not being signed by the witnesses.

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*Certificate of reporter.* [93]

I hereby certify that the above and foregoing is a true and correct translation of my shorthand notes of the testimony of Bartolome Rochin, J. A. Forbes, G. H. Robinson, Diego Escalante, Manule Ferreira, Victor Aguillar, Roman Corral, Jose Mendoza, Eduardo Castaneda, Luis E. Torres, Leoncillas Encinas, and Augustu Bustamente, taken at the cities of Hermosillo and Guaymas, State of Sonora, Republic of Mexico, on the dates above stated, as given to me by the several interpreters.

LUMAN F. PARKER, JR.,

*Official Stenographer, Court of Private Land Claims.*

Which said exhibit bears the following endorsements:

"Depositions in the Algodones case, taken at Hermosillo and Guaymas, Mexico, on the 26th, 28th, 29th, and 30th of November, and 1st and 3rd of December, A. D. 1892. Filed in my office this 12th day of December, A. D. 1892. James H. Reeder, clerk; I. L. Chaves, deputy."

273 Mr. STEVENSON. Also offer title page of plaintiff's Exhibit A 1, introduced and referred to in "Q 16" of the deposition of B. Rochin, taken at Hermosillo, Mexico, on the 26th of November last; also so much of it as refers to the testimonio in this case, the grant made to Rodriguez. Petitioner's Exhibit A 1.

#### EXHIBIT A 1.

The portions of said exhibit introduced are in Spanish, the translation of which is as follows: (Title page.) Review of the titles and expedientes of lands of the States of Sonora and Sinaloa, which exist in the archives of the general treasury of the State of Sonora. State print. Hermosillo, 1889.

To which exhibit objection was made by the United States that it was incompetent and immaterial, because it purports to be made in 1889, of archives then in said office, consequently is not binding on this Government.

The portion of said book which refers to the El Paso de los Algodones grant is found on page 86 thereof, being the third paragraph on said page, and is in Spanish; the translation of which is as follows:

Pasco de los Algodones—(rancho of)—State of Sonora. At the confluence of the Gila and Colorado rivers. Five sitios of land registered in 1838 by Don Fernando Rodriguez, resident of Hermosillo, to whom the respective title was issued.

To which the same objection as above was entered by the United States.

Mr. STEVENSON. I offer law—

Mr. REYNOLDS, U. S. attorney. I object—

By the COURT. The court will allow the laws to go in, subject to objection.

Mr. REYNOLDS, U. S. attorney. Enter an objection to the introduction of the law, because the court will take judicial notice thereof, and therefore it is not a question of fact in the case.

By the COURT. The same ruling will be entered.

Mr. STEVENSON. We offer copy and translation of law number twenty-six (26) of July 11, 1834, of the State of Sonora. (Petitioner's Exhibit S.)

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#### EXHIBIT S.

Which said translation of said exhibit is as follows:

The Governor of the State of Sonora to all its inhabitants:

Know that the congress of the aforesaid State has decreed the following:  
Number 26. The Congress of the State of Sonora decrees the following:

*Organic law and provisional regulation for the revenues of the State of Sonora.*

#### CHAPTER IX.

*Section first.*—On the revenues of the State and the administrative method thereof.

ART. 53. The taxes and revenues established in the State are:

1. That of liguors.
2. That on the transfer and sale of lands.

3. The recording of titles in the transfer of estates.
4. That of excises.
5. The tax on sealed papers.
6. That on tobaccos.
7. The duty on consumption of foreign articles.
8. That of village licenses.
9. That of branding irons.
10. The duty on assays and a fifth of the gold and silver.
- 276 11. That of coinage and reduction upon the gold and silver which is exported.
12. Tonnage duty on foreign vessels.
13. The duty of one-fifth on pearls.
14. The revenue from succession in every kind of extestate property without legitimate heirs.

*Section second.*—Administrative method of the revenues of the State.—  
Liquors.

ART. 54. Six months before the license has expired (five years or less) of the license of liquors, of other commodities hereinafter to be enumerated, which form a part of the revenues of the State, the treasurer-general shall cause notice to be made th'ough the chief judges of the expiration of licenses for thirty consecutive days, so that those interested may make their bids for license. The time of publication being concluded, the bidder or bidders are cited to appear before the treasurer of the three last days of sale, and the proceedings are transmitted to this office.

ART. 55. The public sales shall be held on three consecutive days, according to the previous public notices. The board shall consist of the treasurer, who shall be its president, of the chief judge, and of the administrator of revenues.

ART. 56. The highest bid shall be ascertained in accordance with the regulation in the last part of article 29 of this law.

277 *Section third.*—On the sale of land.

ART. 57. The individual who may need of a piece of land for cattle or horses, or any other use, shall appear before the treasurer-general and register his request in the name of the State. He must be accompanied by three impartial witnesses of approved fitness, in order that he *he* may prove himself to be possessed of sufficient property to be termed a cattle-breeder. This must be done to the satisfaction of the treasurer, who can require the presence of further witnesses, or use such other means, and at such time as in his estimation convenient to set at the truth, and carry out the purpose of this article.

ART. 58. To no one who is not a criador (breeder) can be given more than four sitios (ranches), but to those on account of their abundance of property need more land the treasurer shall concede as much only as they may need, preceding this action by the acquisition of information according to the foregoing article, assuring himself, by such measures as may be necessary to his judgement, of the truth in the matter before making the special concession, to the end that those *those* interested may have no part in the proceedings which he undertakes to fulfill the object of this law.



ART. 59. The treasurer, in continuation, shall, in considering the interests of registrants of land, be entitled to recommend to the judges surveyors for the measurement of the land, on account of special integrity or skill.

278 ART. 60. The treasurer, as immediate chief of all the revenue, shall make the sales and issue the titles.

ART. 61. Those who occupy land, who have registered and had a survey made, but who have not yet procured a title, shall present themselves before the treasurer-general within the time specified by bill number ten of the 30th of May of the current year. The titles of the ranches of the proprietors who do not confirm with this regulation shall be invalid and liable to confiscation, if they do not anticipate the loss of their title in the term of court when the matter comes up, giving reasons in writing for the cease of their dereliction to the subdelegate or judge before whom they appear and make proper disbursements.

ART. 62. The treasurer shall give due notice at the time which appears to him opportune, and as soon as he had done this he shall make over the proceedings to the fiscal promotor (attorney-general) in order that the latter may determine upon the most convenient method for the taxation of those interested, and for the public treasury.

ART. 63. It is the duty of owners of sitios (ranches) to place upon the boundary lines of their estates landmarks of stone, as ordered by the statutes, as soon as they are in possession of their estates; and if within three months, counting from the date that they received their title, they have not complied with this regulation, they shall incur a penalty of \$25,

279 which they shall pay to the judge for the public funds, who moreover shall cause the said landmarks to be constructed at the cost of the said proprietors.

*Section four.—On the taxes upon property.*

ART. 64. The valuation of each dry ranch, which can serve only for pasturage, shall be \$15; for those on which water can be obtained from wells, and which have meadow land, wood, etc., \$40; and without these adjuncts, \$35; for those which have springs or river, whether dry or otherwise, \$70 and \$80, those farms which contain grain-bearing land and are very fertile.

ART. 65. These valuations are the minimum on estate, and can on no account be rebated.

*Section five.—Taxes on surveyors.*

ART. 66. The surveyors shall have a tax of \$25 for the measurement of a ranch. For the measurement of two for the same individual, \$37.50. For that of three ranches for the same owner, \$50; for that of four, ditto, \$62.50.

ART. 67. When the surveyor measures several ranches, each for a different person, each registrant shall be taxed \$25.

ART. 68. The surveying, auditing, and assessing officials shall be paid by the registrant at the rate of fifty cents daily.

ART. 69. For notices and legal proceedings from beginning to end, \$25 shall be paid. The sealed papers shall be at the cost of those interested.

*Section six.—Tax on the final public sale.*

280 ART. 70. For the three public notices of the public sale there shall be paid six dollars for the public treasury ; for the attendance of the fiscal promotor, \$3 ; for the printer and publisher, \$2. The valuation of the title shall be \$30. The sealed paper is at the cost of those interested, but there shall be no extra charge for the ceremonial business customary in final sales.

*Section seven.—General regulations upon the transfer of estates.*

ART. 72. For the assessment of valuation above that minimum which the law provides, the surveyor shall name persons totally impartial in relation to those interested, and after the customary oath has been imposed, they shall proceed to fulfill their mission, estimating the greater or lesser fertility of the land, its locality, and other circumstances, to give it the value which it justly merits.

ART. 73. For the reason that land surveyors ought to have a practical knowledge of the lands which they measure, it is on their responsibility that the valuations are regulated precisely according to the conditions which appear in the foregoing article, and the conditions which are expressed in the 64th article of this law.

ART. 74. Every commissioner of surveying has as a duty to cite parties before him to meet the proprietors of adjoining lands, in order that their respective titles and boundaries may be approved. To this effect  
281 he will notify them or their agents to appear before him at a certain day, and if they do not appear on the day specified, without justification or legitimate cause, the land surveyor shall proceed to carry out his duty, taking care not to lean to either side in the controversy. The costs shall entail to those whose claims do not coincide with the decision of the surveyor.

ART. 75. The notices of the land to be measured shall be made public by the land surveyor in the town to whose jurisdiction the matter pertains.

ART. 76. If, on any account, the publication can not be published in the manner designated by the foregoing article, they can then be published in some other town, provided that it be not further than necessary from the respective locality.

ART. 77. If the person desiring to make proof can not do so on account of some personal infirmity or inconvenience which cannot be removed, the commissioner referred to shall be paid fifty cents per league for coming and going to the said place.

ART. 78. It is the duty of the treasurer to give to the land surveyors all the instructions that he can, formularies for measurement, and everything that will tend to better instruct them in their work ; also to expedite the dispatch of confiscated registrations and titles of exchange without permitting delay or license to do injury to the parties concerned.

ARISPE, July 11, 1834.

Attached to said translation is the following certificate :

282 STATE OF COLORADO,  
County of Arapahoe, ss:

I, E. Curtis Hill, of lawful age, being duly sworn, depose and say that the foregoing is a correct interpretation from the Spanish of the annexed Spanish document, being a decree of the congress of the State of Sonora, No. 26.

E. CURTIS HILL.

Subscribed and sworn to before me this 6th day of June A. D., 1892.

[SEAL.]

CHARLES A. BERDEL,  
Notary Public.

My commission expires March 14, 1895.

Which said exhibit bears the following endorsements: Copy of part of the State law of Sonora, Mexico, No. 26, July 11, 1834, Ex. S. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18th, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Mr. STEVENSON. I offer a copy of chapter three of the same law, detached from the former offered. Petitioner's Exhibit T.

#### EXHIBIT T.

283 Which said exhibit is in the Spanish language; the translation thereof is as follows:

The governor of the State of Sonora—to all the inhabitants thereof:

Know ye, that the congress of said State has decreed the following, No. 26:

The congress of the State of Sonora decrees the following

*Organic law and provisional regulation for the treasury of the State of Sonora.*

#### CHAPTER THREE.

*Section first.*—The auditor of the treasury.

ART. 35. This employee is the second head of the office, and his duties those this law designates.

36. In order to be auditor the same conditions are necessary as article 5 provides for the treasurer. He shall have a salary of one thousand five hundred dollars per annum, and he shall give a bond for his management, as stated in the chapter on general provisions.

Temporary absences or impediments of the treasurer shall be covered by the auditor in regular order.

ARISPE, July 11, 1834.

Which said exhibit bears the following endorsements: Copy of 284 law, No. 26, of the State of Sonora, Mexico, July 11, 1834. Ex. T. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

CLARENCE KEY, being duly sworn, testified on behalf of petitioner, in English, as follows:

Direct examination by A. M. STEVENSON, Esq.:

Q. State your name, residence, and occupation.

A. Clarence Key; more than twenty-one years; translator; residence, Santa Fe.

Q. Are you acquainted with and familiar with the Spanish language and translate Spanish into English and English into Spanish?

A. Yes, sir.

Q. State what experience you have had in matters of this kind?

A. About twenty years.

(Mr. Reynolds, U. S. attorney, admits that Mr. Key is a thorough and experienced Spanish scholar, and competent to translate the Spanish language into the English and the English language into the Spanish.)

Q. Examine this paper that I now hand you and state what it is?

A. It is extracts from the political constitution of the free  
285 State of Occidente, decreed and sanctioned by its congress in the year 1825. The translation contains section 1 entire, articles seven and eight of section second, article one hundred and nine of section eight, and article two hundred and ninety-three of section sixteen.

Q. I will ask you if this is a correct translation of the constitution of the States of Sinaloa and Sonora as it was promulgated?

A. It is a true translation of those portions of the constitution of the State of Occidente.

Q. What composed the State of Occidente?

A. States of Sonora and Sinaloa.

Q. Was this translation made by you?

A. Yes, sir.

Mr. STEVENSON. We offer that in evidence.  
(Petitioner's Exhibit U.)

#### EXHIBIT U.

Which said exhibit is in the words and figures following, to wit:

Political constitution of the free State of Occident, decreed and sanctioned by its congress in the year 1825.

Fuerte: Government printing office, in charge of the citizen J. Felipe Gomez.

No one shall reprint this constitution without permission of the honorable congress of the State.

286 The governor in charge of the free State of Occident to all its inhabitants:

Know ye, that the honorable constituent congress of the same has decreed and sanctioned the following political constitution of the free State of Occident.

The representatives of the free and sovereign State of Occident assembled in constituent congress with the object of fulfilling the law of its institu-

tion, and invoking the Supreme Author and Legislator for guidance, decree and sanction the following :

*Political constitution for its internal government.*

*Section first.*—Of the State, its territory and religion.

ARTICLE 1. The State of Occident and its territory is composed of all the towns embraced by that which was formerly called the intendency and political government of Sonora and Sinaloa. A constitutional law shall fix its limits.

2. In that which exclusively pertains to its internal government it is free, independent, and sovereign; and in that relating to the Mexican federation, the State delegates its powers and rights to the congress of the union.

3. For its better order it is divided into the five following departments :  
First. That of Arispe, composed of the district of the same name, and that of Oposura and Altar.

Second. That of Horcasitas includes the district of the same name, that of Ostimuri and Pitic.

Third. That of Fuerte, composed of the district of the same name, and Alamos and Sinaloa.

287 Fourth. That of Culiacan includes that of the same name and Colala.

Fifth. That of San Sebastian, composed of that of the same name, Rosario and San Ignacio de Piastia. The law of January 19 last is subject to this designation of limits.

4. It is the obligation of the State to protect by wise and just laws the equality, liberty, property, and security of all its inhabitants, although they may be foreigners and transients. Wherefore slavery is absolutely prohibited throughout its territory, as well as the traffic or sale of Indians of the barbarous tribes, and those who are now in servitude by reason of that unjust traffic are free as well as the slaves.

5. The constitutional congress will by law determine the indemnity which the State shall make, when its circumstances will permit, to those who, at the publication of this constitution, shall hold slaves.

6. The religion of the State is the Roman Catholic Apostolic without tolerance of any other. In that which relates to the expenses of the cult, the laws in force will govern so *land* as the nation by the proper means and in conformity with that which is provided in the general constitution shall not make any other disposition; it being the duty of the State to protect and preserve it in all cases by just and beneficent laws.

*Section second.*—Of the government of the State.

288 7. The government of the State of Occident is republican, representative, popular, federal. There shall not be in it hereditary offices nor privileges.

8. The general power of the State shall never be placed in any one person or corporation.

\* \* \* \* \*

*Section eighth.*—Of the powers of the congress and its permanent committee.

109. The powers of congress are :

First. To prescribe the laws relating t' the administration and internal government of the State in all their branches; to interpret them, to elucidate, suspend, or abrogate them.

Second. To watch incessantly over the preservation of the rights, civil and political, of the inhabitants of the State, and to promote by all means in its power the general prosperity.

Third. To make the codes, civil and criminal, of the special legislation of the State, under a clear and well-combined plan.

Fourth. To canvass the votes cast in the departmental electoral meetings by the citizens for governor, vice-governor, and councillors of the State by popular nomination, in the manner which will be hereafter expressed.

Fifth. To decide the ties which may occur in said nomination between two or more persons.

Sixth. To resolve or decide all doubts which may arise in said elections, and on the condition of those elected.

Seventh. To qualify the causes which may be alleged for not  
289 filling said offices, and to decide that which it believes to be proper.

Eighth. To declare when there is cause for bringing suit for common offences, as well as for official offences, against the deputies, the governor, his secretary, ministers of the court of justice, and the general treasurer.

Ninth. To make like declaration against other public functionaries for infractions of the constitution.

Tenth. To examine, approve or disapprove the accounts of all the public funds of the State.

Eleventh. To fix each year on estimate furnished by the government the expenses of the public administration of the State.

Twelfth. To impose taxes to cover the same, in accordance with this constitution, and with the general constitution of the federation, and to approve the partition which may be made of them among the districts of the State.

Thirteenth. To establish, change or reform the regulations for the collection of taxes and the administration of the special branches of the State.

Fourteenth. To examine, correct, approve or disapprove the municipal taxes of the towns, and the ordinances for their internal management which their corporations may adopt.

Fifteenth. To make representation to the general congress in regard to the laws, decrees, or general order which are contrary to or prejudicial to the interests of the State.

Sixteenth. To approve or disapprove the regulations which the  
290 government may make for the despatch and administration of the matters under its charge, and of the general regulations which it may make for the health and police of the State.

Seventeenth. To promote, forward, and encourage agriculture, trade, mining, and the arts, removing all the obstacles which impede the progress of said branches, or that of any other industry that may tend to the prosperity of the State.



Eighteenth. To settle the boundaries of the lands of the native inhabitants, settle their differences in accordance with the circumstances and the present system of government.

Nineteenth. To prescribe laws for enlightenment and public education in the State.

Twentieth. To make rules for colonization in conformity with the laws.

Twenty-first. To fix the boundaries of the districts, to enlarge them, abolish them, or create new ones.

Twenty-second. To grant extraordinary powers to the government for a limited time, provided it is required for the general good of the State, or to resist an invasion of a foreign enemy, or to reestablish internal order and tranquillity in conformity with the laws.

Twenty-third. To grant pardons when it may believe it to be necessary by a vote of two-thirds of the deputies present in offences within the jurisdiction of the tribunal of the State.

Twenty-fourth. If, under extraordinary circumstances, the security of the State should require the suspension of any of the formalities prescribed for the arrest and imprisonment of offenders, the legislatures may prescribe them for a fixed time.

Twenty-fifth. To create, suppress, and properly provide for the payment of the offices of the State.

Twenty-sixth. To contract debts, in cases of necessity, on the public of the State, and to designate funds to cover them.

Twenty-seventh. To issue letters of naturalization to foreigners who become residents of the State in conformity with the rules which the general Congress may prescribe.

Twenty-eighth. To grant instruments of rehabilitation for the restoration of the rights of citizenship when they may have been lost or suspended.

Twenty-ninth. To protect the political liberty of the press in conformity with the laws of the general Congress.

Thirtieth. To elect, in accordance with the general constitution, the President and Vice-President of the Mexican federation, the ministers of the supreme court of justice, and senators of the Congress of the union.

Thirty-first. Finally, to exercise all the powers of a legislative body in its internal government and administration, not contrary to the general constitution and the constitutive act.

\* \* \* \* \*

*Section sixteenth.*—Of the public treasury of the State.

292 293. The revenue not reserved by the federation by the decree of classification of revenues of August 4, 1828, last past, are those which up to the present time have formed the elements of the revenue of the State. Hereafter the congress will impose the taxes which it may deem proper, in such amount only as may be sufficient to cover the deficit which may result against the State on account of the general expenses of the Mexican federation which it has to pay and the special expenses of the State itself.

\* \* \* \* \*

Which said exhibit bears the following endorsements: Political constitution, State of Occidente, 1825.

Ex. U. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, dupuyt clerk.

CLARENCE KEY, direct examination—continued:

By Mr. STEVENSON:

Q. Examine paper endorsed, "Classification of general and special revenues," and state what it is.

A. This is a decree in full passed on August 4, 1824, by the general constitutional Congress of the United States of Mexico. It is entitled: "Classification of general and special revenues."

Q. Is that paper a correct translation of the decree of the National Government of Mexico of August 4, 1824?

A. It is correct, so far as I am able to translate it.

293 Q. Was it made by you?

A. Yes, sir.

(Petitioner's Exhibit UU.)

#### EXHIBIT UU.

Which said exhibit is in the words and figures following, to wit:

*Decree of August 4, 1824.*

#### Classification of general and special revenues.

The sovereign general constituent Congress of the United States of Mexico has deemed it proper to decree:

1. That import and export duties already fixed, and those which may be hereafter fixed under any denomination in the ports and on the frontiers of the Republic, pertain to the general revenues of the federation.

2. The import duty of fifteen per cent which shall be collected at the said ports and frontiers upon the tariff valuation, augmented by one-fourth part upon foreign goods, which, on account of this duty, shall be free from local tax (alcabala) in the interior.

3. The duty on tobacco and gunpowder.

4. The local tax (alcabala) on tobacco at the places where it is raised.

5. The revenue from the post-offices.

6. The revenue from the lottery.

7. The revenue from the salt mines.

294 8. The revenue from the territories of the federation.

9. The national property, in which are included that of the inquisition and the temporalities, and all other rural and urban estates which now belong, or which may hereafter belong, to the public treasury.

10. The edifices, offices, and lands attached to these, which now belong, or which formerly belonged, to the general revenues, and those which have been paid for for two or more of those which formerly were provinces, are subject to the disposal of the Federal Government.

11. The revenues which are not included in the foregoing articles belong to the States.

12. The credits, active and passive, of the revenues assigned to the States are of the credit or total of the general revenues.

13. In the peninsula of Yucatan the export duties imposed on the products of the country shall not be included in the general revenues, nor shall any import duty be imposed.

14. The States of the federation shall be assessed in the sum of \$3,136,875, which it is estimated is needed for the general expenses.

15. The assessment shall be for the present, and until there are data which shall furnish the proper proportion, in the following form :

Mexico shall pay .....	975, 000	Durango .....	67, 325
Xalisco .....	365, 625	Estado de Occidente .....	53, 125
Puebla .....	328, 125	Tamaulipas .....	24, 500
295 Oajaca .....	262, 500	Tlaxcala .....	21, 875
Guanajuato .....	218, 750	Tabasco .....	18, 750
Michoacan .....	175, 000	Nuevo Leon .....	18, 750
Yucatan .....	156, 250	Chichuahua .....	16, 875
Zacatecas .....	140, 625	Coahuila .....	15, 625
San Luis Potosi .....	101, 250		
Vera Cruz .....	97, 675	Total .....	3, 136, 875
Querstaro .....	78, 750		

16. The States shall deliver every month or every fifteen days, counting from the one on which they receive their revenues, the part of the contingent corresponding to the period expired, it being at the pleasure of the Government to elect either of the two periods, and even to extend them, should the peculiar circumstances of a State require it.

17. On the first of September next after their revenues and the offices corresponding shall be delivered to the States, striking at the same  
296 time the balances necessary for the definitive settlement of accounts.

18. When the States shall present exact statements of their wealth and population, the present assessment shall be rectified, and payments made to those which may have paid too much, and collection made from those which may have paid too little.

19. The Government shall take the steps most expedient to begin the collection of the import duty as soon as possible, and will arrange matters in such manner that the internal cus'om-houses being delivered, none of the foreign goods which may be in port or on the road be exempted from the payment of the local tax (alcabala), seeing that it is collected with due separation in the said custom-houses.

20. National products shall not pay more than one local tax in the State in which they may be consumed.

21. Consequently, if the local tax has been collected on a national product and it should be afterwards taken to another State the tax paid on it shall be returned.

22. For the first year a third of the contingent to be paid by the States shall be remitted.

Which said exhibit bears the following endorsements : " Aug. 4, 1824.

Classification of general and special revenues. Ex. UU. Filed  
297 Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy.

CLARENCE KEY, direct examination—continued.

By A. M. STEVENSON, Esq. :

Q. Examine paper marked " May 14, 1851, repealing colonization law of Sonora," and state what it is.

A. It was issued by the department of the interior and foreign relations; it is number seventy-two, entitled colonization; and makes void the decree made in regard to colonization by the legislature of the State of Sonora, dated decree of May 6, 1850.

Q. Is that paper a correct translation of that decree?

A. Yes, sir.

Q. And the same was made by you?

A. Yes, sir.

(Petitioner's Exhibit V offered, which is said law of May 14, 1851.)

#### EXHIBIT V.

Which said exhibit is in the words and figures following, to wit:

#### DEPARTMENT OF THE INTERIOR AND FOREIGN RELATIONS, *May 14, 1851.*

#### No. 72.—Colonization.

The decree made in regard to the same by the legislature of Sonora is declared void.

His excellency the President has been pleased to forward to me the following decree:

298 The constitutional President of the United Mexican States, to the inhabitants of the same:

Know ye, that the general Congress has decreed the following:

The decree of the legislature of the State of Sonora, of May 6, 1850, is unconstitutional. It is as follows:

ARTICLE 1. All the uncultivated and vacant lands in the State on its frontiers which belong to it and which do not belong to any private person or to any corporation or town are open to colonization.

ARTICLE 2. All foreigners who propose to settle on these lands, and against whom there is no prohibition under the general laws, are offered security and protection for their persons and interests.

ARTICLE 3. The State grants to each family settling on said lands one caballeria in area of irrigable, cultivable lands, which is in extent one thousand four hundred varas in length and five hundred and fifty-two in width, or a tract of five thousand square varas in area of abrevadero, and in addition the land necessary for the erection of dwelling houses in the towns.

ARTICLE 4. The settlers on the land, the subjects of this law, shall settle upon them and cultivate them in order to enjoy their fruits, and they shall not alienate them until after the expiration of six years, under penalty of losing them and their being given to another settler who may ask for them.

299 ARTICLE 5. For the term of ten years from the establishment of a colony the settlers are exempt from all tax, direct or indirect, of those now imposed or those which may hereafter be imposed by the State.

ARTICLE 6. The effects, utensils, lumber, and whatever may be imported for the use and consumption of said colony are free also for the said term of all duty.

ARTICLE 7. The products of the colony are also free of all duty in the State.

ARTICLE 8. The gold and silver exported from it are free from the date of its establishment of the assay duty of three per cent.

ARTICLE 9. The Government is empowered in its discretion to decide upon the regimen and interior administration in the founding of colonies which may be established on the said lands, to contract enterprises (empresas) directed to this end, and to determine which lands are most suitable under the bases and franchises of this law; and for these objects further privileges are solicited. They may be granted at the discretion of the Government, subject to the approval of Congress.

ARTICLE 10. Foreigners established in the colony shall enjoy all the rights, civil and political, which the law allows, as well as the right which they held under the same for the acquisition of all kinds of real property.

ARTICLE 11. Mexicans and foreigners shall enjoy the same privileges in a colony in Sonora, but the circumstances being equal, the Mexican empresario shall be preferred to the foreigner.

300 ARTICLE 12. The colony shall be understood to be established as soon as there are at least one hundred families settled in a town.

ARTICLE 13. To the empresario who may contract for the establishment of a colony under the articles of this law, there may be granted in fee ten sitios (tracts) in an area of abrevadera and their caballerias in area of irrigable lands, or ten of land dependant on the seasons (temporal).

ARTICLE 14. The colonists, in case of need, are under obligation to aid in person and with their means in the defense of the State and their new country.

Because it is contrary to article 11 of the act of reforms, which says:

"It is the exclusive faculty of the general Congress to fix bases for colonization, and to prescribe laws in conformity with which the powers of the Union shall exercise their constitutional faculties;" and article 2 of the general law, published on April 25, 1835, which says: "Article 2. In the exercise of the power which the General Government reserved to itself in article 7 of the said law of August 18, 1824, the seaboard and frontier States are prohibited from alienating their vacant lands for colonization until the rules which must be observed to effect the same shall have been published.

MARCELINO CASTAÑEDA,

*President of the Senate.*

PEDRO ESCUDERO Y ECHANOVE,

*Deputy President.*

MANUEL ROBREDO,

*Senator Secretary.*

LEON GUZMAN,

*Deputy.*

301 Wherefore, I order to be printed, published, circulated, and that it be duly observed.

Palace of the Federal Government in Mexico.

May 14, 1851.

MARIANO ARISTA.

To Don JOSE MARIA ORTIZ MONASTERIO.

And I communicate it to you for its fulfillment.

God and Liberty.

Mexico, May 14, 1851.

JOSE MARIA ORTIZ MONASTERIO.

Which said exhibit bears the following indorsements: May 14, 1851. Repealing colonization law of Sonora. Ex. V. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy.

CLARENCE KEY—continued on.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney:

Q. Where did you find the original laws—the constitution of the State of Occidente?

A. I found it in a small book which was handed me by Mr. Stevenson with the request that I translate it.

Q. This document which I hand is is the one from which you made this translation of the constitution of the State of Occidente?

A. Yes, sir.

Q. You know nothing about this except that?

A. No, sir; nothing whatever.

Q. This decree of May 14, 1851, being number seventy-two, repealing law of Sonora on colonization, is a federal law, or a federal decree?

A. Yes, sir; and I made this translation from the law found in the official copy of the Mexican statutes at large, in the office of Mr. T. B. Catron, of this city, dated May 14, 1851. It is made by the general congress and the extracts of it show that fact, as the introduction of it is as follows: "His excellency the President has been pleased to forward to me the following decree. The constitutional President of the United Mexican States, to the inhabitants of the same. Know ye, That the general Congress has decreed the following, &c."

Witness excused.

Mr. STEVENSON. Now offer constitution of the Republic of Mexico of 1824, and the colonization law of the Republic of Mexico of August 18, 1824.

303 Which said colonization law was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V1, which said exhibit is in the words and figures following, to wit:

*Decree of August 18, 1824.*

The sovereign general constituent Congress of the United Mexican States has been pleased to decree:

1. The Mexican nation promises to those foreigners who may come to establish themselves in its territory, security in their persons and property, provided they subject themselves to the laws of the country.

2. The objects of this law are those national lands which are neither private property nor belonging to any corporation or town (pueblo), and can therefore be colonized.



3. To this end the congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarkation, with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

4. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, can not colonize without the previous approval of the supreme general executive power.

5. If for the defense or security of the nation the Federal Government should find it expedient to make use of any portion of these lands  
304 for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general Congress, or during its recess with that of the Government council.

6. Before the expiration of four years after the publication of this law no tax or duty (*derecho*) shall be imposed on the entry of the persons of foreigners who come to establish themselves for the first time in the nation.

7. Previous to the year 1840 the general congress can not prohibit the entry of foreigners to colonize, except compelled to do so with respect to the individuals of some nation, by powerful reasons.

8. The Government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation with respect to the foreigners who may come to colonize. In the distribution of lands Mexican citizens are to be attended to in preference, and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country, or inequality of circumstances, residence in the place to which the lands distributed belong.

9. Military persons who are entitled to lands by promise made on the twenty-seventh of March, 1821, shall be attended to in the States on producing the diplomas granted to them to that effect by the supreme executive power.

305 10. If by decess of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

11. No one person shall be allowed to obtain the ownership of more than one square league of five thousand varas of irrigable land (*de regadio*); four superficial ones of land dependent on the seasons (*de temporal*), and six superficial ones for the purpose of rearing cattle (*de abrevadero*).

12. The new colonists can not transfer their possessions in mortmain (*manos muertas*).

13. This law guarantees the contracts which the grantees (*empresarios*) may make with the families which they may bring out at their expense, provided they are not contrary to the laws.

14. No one who by virtue of this law shall acquire the ownership of lands shall retain them if he shall reside out of the territory of the Republic.

15. The Government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic.

Mr. STEVENSON. Offer the national decree of that Republic of April 6th, 1830.

306 Which said decree was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V 2, and is in the words and figures following, to wit :

APRIL 6TH, 1830.

*Decree.*

The Vice-President of the Mexican United States to the inhabitants of the Republic :

Know ye, that the general Congress has decreed as follows :

ART. 1. The entry of those descriptions of cotton goods prohibited by the law of the 22nd of May last shall be permitted in all ports of the Republic generally until the 1st of January, 1831, and in those ports situated on the South Sea, until the last of June, 1831.

ART. 2. The duties arising from the importation of such goods shall be appropriated to maintaining to indivisibility of the Mexican territory, to the formation of a fund of reserve, to be used in case of a Spanish invasion, and to the encouragement of national industry.

ART. 3. The Government shall appoint one or more commissioners, whose duty it shall be to visit the colonies of the frontier States ; to contract with the legislatures of said States for the purchase by the nation of lands suitable for the establishment of new colonies of Mexicans and foreigners ; to enter into such arrangements as they may deem proper ; to watch over the exact compliance of the contracts on the entrance of new colonies ; and to investigate how far the contracts already made have been complied with.

307 ART. 4. The executive is empowered to take possession of such lands as made be suitable for fortifications and arsenals, and for the new colonies, indemnifying the State in which such lands are situated by a deduction from the debt due by such State to the federation.

ART. 5. The Government may cause such number of the convicts destined for Vera Cruz and other places as it may deem proper to be conducted to the colonies it may establish, paying at the same time the expense of removal of such families as may desire to accompany them.

ART. 6. The said convicts shall be employed in the construction of the fortifications, public buildings, and roads which the respective commissioner may judge necessary, and every convict who shall receive a grant of land and shall be furnished with implements of husbandry and a subsistence during one year.

ART. 7. Mexican families who may voluntarily desire to become colonists shall be conveyed free of expense, subsisted during one year, and receive a grant of land and the necessary implements of husbandry.

ART. 8. The individuals spoken of in the anterior articles shall conform to the laws of colonization of the federation and the State in which they are settled.

308 ART. 9. The entrance of foreigners by the frontier of the north, under any pretense whatsoever, is prohibited, unless furnished with a passport, signed by an agent of the Republic in the country from which the individual may come.

ART. 10. No change will be made with respect to the colonies already established, nor with respect to the slaves which they now contain ; but

the General Government, and that of each particular State, shall exact, under the strictest responsibilities, the observance of the colonization laws, and the prevention of the further introduction of slaves.

ART. 11. In exercise of the right reserved to the General Congress by the 7th article of the law of 18th of August, 1824, the citizens of foreign countries lying adjacent to the Mexican territory are prohibited from settling as colonists in the States or territories of the Republic adjoining such countries. Those contracts of colonization, the terms of which are opposed to the present article, and which are not yet complied with, shall consequently be suspended.

ART. 12. For and during the term of four years the coasting trade shall be free to foreign vessels for transportation of produce of the colonies to the ports of Matamoras, Tam'ico, and Vera Cruz.

ART. 13. For and during the term of two years the introduction of frame houses and of every kind of foreign provisions shall be admitted into the ports of Galveston and Matagorda free of duty.

ART. 14. The Government is authorized to expend in the construction of fortifications and public buildings on the frontier, in the transportation of convicts and Mexican families to the new colonies, in the subsistence of such during one year, in implements of husbandry, transportation of troops, and premiums to agriculturists who may distinguish themselves amongst the colonists, and for the general purposes contemplated by the foregoing articles, the sum of five hundred thousand dollars.

ART. 15. For the purpose of raising promptly one-half of the said sum the Government is authorized to negotiate a loan, payable from the duties received on coarse cotton goods, at the rate of three per cent per month, to be paid at the term fixed by the Arancel.

ART. 16. The twentieth part of the above-mentioned duties shall be employed to encourage cotton manufactories, by purchasing machines and looms, by furnishing small sums to aid in their establishment, and by such other means as the Government may deem most advisable, apportioning the aid among the States where this branch of industry exists. This appropriation shall be placed at the disposition of the minister of relations, to be applied to the above-stated interesting objects.

ART. 17. Out of the produce of said duties shall also be reserved three hundred thousand dollars for the formation of a fund to be deposited in the treasury, under the most strict responsibility of the Government that it shall not be touched except in case of Spanish invasion.

ART. 18. The Government shall form a system for the regulation of the new colonies, and shall, within one year, lay before Congress an account of the colonies established under this law and a statement of the increase of the new settlement on the frontiers.

JOSE DOMINGUEZ,

*Pres't of the Ch. of Dep.*

MIGUEL DUQUE DE ESTRADA,

*Pres't of the Senate.*

JUAN VICENTE CAMPOS,

*Dep. Sect.*

RAFAEL DELGADO,

*Sect. of the Senate.*

Wherefore, I command the present to be printed, published, and circulated and fulfilled.

Palace of the Federal Government, Mexico, April 6th, 1830.

ANASTACIO BUSTAMENTE.

To D. LUCAS ADAMAN.

Mr. STEVENSON. I offer decree of the national Congress of Mexico of October 16, 1856.

Which said decree was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V 3, and is in the words and figures following, to wit :

Department of state and office of government.

His excellency the substitute President has been pleased to direct to me the decree which follows :

Ignacio Comonfort, substitute President of the Mexican Republic, to the inhabitants thereof :

Know ye that the constituent Congress, in use of the faculties which it has to review the acts of the executive, decrees what follows :

311 1. The decree of November 25, 1853, and of July 7, 1854, are null.

2. D. Antonio Lopez de Santa Anna and the ministers who have intervened in their approbation and publication are responsible with their property for the damage and losses which they have occasioned.

3. The governors of the departments are equally responsible with their property for the damages and losses which they have caused in executing the provisions relative to public lands by going out of the limits marked in the respective rights.

J. MARIA MATA,

*President.*

LEON GUZMAN,

*Deputy Secretary.*

JOSE MARIA CORTES Y ESPARZA,

*Deputy Secretary.*

Wherefore I command it to be printed, published, circulated, and that due compliance be given it.

Palace of the National Government in Mexico, the sixteenth of October, 1856.

IGNACIO COMONFORT.

To the citizen JOSE MARIA LAFRAGUA,

*Minister of Government.*

And I communicate it to you for your understanding.

God and liberty.

Mexico, October 16, 1856.

LAFRAGUA.

Which said exhibit bears the following endorsements, to wit: Decree of Oct. 16, 1856. Annulling decrees of Santa Anna. Ex. V 3. Filed Oct. 18, 1892. J. H. Reeder, clerk, by I. L. Chaves, deputy.

312 E. M. SANFORD, being first duly sworn, testified, in English, on behalf of petitioner, as follows :

Direct examination by A. M. STEVENSON, Esq. :

Q. Where do you reside?

A. I am a resident of Yuma, Arizona.

Q. Did you prepare the petition for the confirmation of the grant of land involved in this case?

A. I did.

Q. Are you acquainted with the location and character of the land in this case?

A. I have been over it and have a general knowledge; yes, sir.

Q. State whether or not the description of the land claimed is correctly described in the petition.

A. I believe it is.

Q. Then the description in the petition correctly describes the land in the grant made by the State of Sonora to Fernando Rodríguez?

A. Yes, sir; barring the land from the confluence of the Gila and Colorado rivers to the Paso de los Algodones; there there is some land still below the line.

Q. That is, part of the land is not included in the petition, but is still in the limits of Mexico and the El Paso de los Algodones grant?

313 A. There is, yes, sir; a part.

Q. Are you acquainted with the place called El Paso de los Algodones?

A. Yes, sir; that is in the State of Sonora, south of the international boundary line of the United States; and it is below what they call Carter River, and Carter River is one of the tributaries of the Salt River.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney:

Q. How much of this land is south of the line?

A. I should judge—I can't give the acreage, but probably as much as mile and a half or two miles down.

Redirect examination by A. M. STEVENSON, Esq.:

Q. State, if you please, if you made the negotiations for the purchase of this land from the Colorado Commercial and Land Company.

A. I did; I negotiated the purchase and made the purchase myself.

Q. State if anyone was in possession of the land at the the time you purchased it from the land company.

A. Sup'intendant Purdy, one of the original officers of the company, was.

Q. Where did Mr. Purdy live?

A. He lived down there; formerly lived on the Old Colorado Railroad. The place was called Arizona City and then Colorado City, and it was changed by this company to Yuma.

314 A. But this settlement was made by this company a little below that—.

Q. But made on the grant?

A. Yes, sir.

Witness excused.

EARL B. COE, the petitioner, being first duly sworn, testified in English as follows :

Direct examination by A. M. STEVENSON, Esq.:

Q. What is your name and residence?

A. Earl B. Coe; residence, Denver Colorado.

Q. Are you the plaintiff in this case?

A. I am.

Q. I will ask you to examine these several photographs, claiming to be photographs of signatures, and state if you know when these photographs were taken and under circumstances.

A. I do.

Q. I will ask you if these photographs were taken at the office of the treasurer-general of the State of Sonora at the time that Justices Murray and Sluss visited there for the purpose of taking testimony in this case?

A. They were taken at that time and under those circumstances by Mr.

A. W. Dennis.

Q. State in a general way what they are.

A. I can identify them by letter, and will say that these photographs were all taken from documents other than the documents in question in this case, and from documents that at the time were admitted, so far as this case was concerned, to be genuine documents on file in the archives of Sonora. They are prepared and marked alphabetically from "A" to "Z," and then again from "A1" to "F1."

Q. Are you acquainted with the character and location of the land the plaintiff seeks to have confirmed in this action?

A. I am.

Q. Will you state the improvements that have been placed there by yourself and your grantors?

A. There is a ditch built about twelve or thirteen miles—completed that length, but surveyed the entire length of the grant; the grant of land has been surveyed, also laterals, that is, subdivisions; machinery for lifting water into the ditch, pumps, engines, and boilers have been completed, pumping apparatus requisite for supplying the water for the irrigation of the grant provided; a portion of the grant, I think about twelve miles, is under fence; some portions of it clear; some portions of it cultivated.

Q. Have you been connected with this enterprise since the Colorado Commercial and Land Company conveyed it?

A. Yes, sir.

Q. State if you please about how much money you and your associates have spent upon this enterprise.

A. About one hundred and forty or one hundred and fifty thousand dollars. I would like to state possibly I was a little high, when speaking of this land, as part of the improvements is on the Government land, adjoining and running through some Government land.

Q. What is the general character of the land known as Government lands with reference to the character of the land in this grant?

A. It is precisely the same until we move back; then, perhaps, it is little better, this Government land, on account of the overflow of the Colorado on the grant, but the general characteristics of the land are the same.



No cross-examin'tion.

Mr. STEVENSON. We now formerl'y offer these photographs as testified to by Mr. Coe, and ask to have them identified as numbered by him.

Which said exhibits are enumerated as follows: Being thirty (30) photographs, cabinet size, identified alphabetically "A" to "Z," inclusive, and from "A1" to "D1" inclusive; also "G1"; also two very large-size photographs, indetified as "E1" and "F1." It being impossible to attached said exhibits hereto, the same are put under sepearte cover, forwarded herewith and made a part of this transcript.

Mr. STEVENSON. We offer certain correspondance between John Wasson, surveyor-general of the Territory of Arizona, and the Commissioner of the General Land Office, which correspondance is certified to by Royal A. Johnson, surveyor-general of the Territory of Arizona, said certificate being dated June 2, 1892. (Petitioner's Ex. W.)

317

# EXHIBIT W.

Which said exhibit is in the words and figures following, to wit:

(Official letters must be addressed to the "Commissioner of the General-Land Office," and in replying to letters from the office the initial letter on the left-hand corner should be referred to.)

D

L. A. F.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., Feb'y 12, 1874.*

JOHN WASSON, Esq.,

*U. S. Surveyor-General, Tucson, Arizona Ty.:*

SIR: Whenever you shall be satisfied that any part of the lands under your jurisdiction is included within the limits of a private-land claim derived from the Spanish or Mexican authorities you are hereby directed not to permit such lands to be surveyed as public lands of the United States until the rights of the private-land claimants have been determined or the land thus claimed has been decided not to be within the limits of such Spanish or Mexican claim; and if any land thus claimed has already been surveyed you are hereby directed to suspend all sections or parts of sections thus included and which you are satisfied are claimed as aforesaid.

318

Very respectfully, your obedient servant,

WILLIS DRUMMOND,  
*Commissioner.*

(Endorsed:) General Land Office. Washington, D. C., Feb. 12, 1874.  
Commissioner. Relative to lands within the limits of Spanish and Mexican grants. Red'd March 7, 1874.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
*Tucson, Arizona, March 17, 1874.*

Hon. WILLIS DRUMMOND,

*Commissioner Gen'l Land Office, Washington, D. C.:*

SIR: Since the receipt of your letter of the 12th ultimo, regarding lands within the limits of Spanish and Mexican grants, which I duly

acknowledged on the 7 instant, I have given the subject of it careful consideration and have formed some conclusions which it seems prudent to submit to you.

There is no evidence in this office to fully satisfy me that any specific tract of land in Arizona is covered by a Spanish or Mexican grant, and therefore I do not deem it a clear duty to at present exercise the authority conferred by you in such cases.

Mullen and Hyde, of San Francisco, Cal., representing themselves as attorneys for Juan D. Robinson, of that city, have forwarded to me a package of documents which on their face show that Robinson claims an extensive grant of land at the junction of the Gila and Colorado rivers in this Territory, covering a large portion of the land required to be subdivided by Theo. F. White, D. S., under his contracts, Nos. 18 and 21, of dates, July 7, 1873, and August 25, 1873. There is such evidence of a grant presented in these papers that I feel justified in declining to send approved plats and descriptive lists of surveys to the local land office, but will complete the work for this office, the local land office, and the General Land Office, and send the work and deputy's account therefor to your office, for these reasons :

Both contracts were entered into and finally approved before I had the least knowledge that a grant was claimed there, and owing to so much agitation, publication, and notori'ty given to the Yuma town-site case without an intimation of there being a grant there, I was satisfied there was none.

The first time my attention was properly called to an examination of title to this class of lands was on the 7 instant, on receipt of your letter.

I have serious doubts of my power to suspend work under contracts named, even if I could understand how any public benefit could be attained thereby, and about one-half the work of contract No. 18 (for \$5,000) relates to lines outside of the alleged grant, and all the work under it has been executed by the deputy, as also a greater portion of that under contract No. 21 (for \$2,500), two-thirds of the field notes being already in this office in the hands of the clerks.

To restate my purpose, I have decided to act as follows :

Complete the work of this office on the survey made by Theo. F. White, D. S., under contracts Nos. 18 and 21, withhold the plats and descriptive lists from the local land office until it shall satisfactorily appear that said surveys are not covered by a grant, and transmit the transcribed and approved field notes and plats, together with the deputies' accounts for the field work, to your office. Should you disapprove this course, please favor me with a telegram to that effect and follow it with instructions.

Very respectfully, your obt. servt.,

JOHN WASSON,  
*Surveyor-General.*

(Official letters must be addressed to the "Commissioner of the General Land Office," and in replying to letters from the office the initial letter on the left-hand corner should be referred to.)

E.  
S. J. D.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 18th, 1874.*

JOHN WASSON,  
*Surveyor-General, Tucson, Arizona :*

SIR : I am in receipt of your letter of the 17th ultimo, referring  
321 to mine of the 12th of February last, relative to lands within the  
limits of Spanish and Mexican grants.

You state that documents have been filed in your office by the attorneys  
of Juan D. Robinson, which show that Robinson claims an extensive grant  
at the junction of the Gila and Colorado rivers covering a large portion  
of the land required to be subdivided by Deputy Theo. F. White under  
his contracts, Nos. 18 and 21.

You further state that all the work under contract No. 18 and the  
greater portion under contract No. 21 has been executed in the field and  
the notes returned to your office. You propose, therefore, under these  
circumstances, to forward the returns under said contracts to this office, as  
usual, but to withhold the plats and descriptive lists from the local land  
office until it shall be satisfactorily determined whether the surveys are  
covered by a private grant.

In reply, I have to say that your course is approved in this case, but  
you will in future suspend surveying operations whenever it shall appear,  
from the documentary evidence, that the lands under contract fall within  
the claimed limits of a Spanish or Mexican grant.

Very respectfully,

WILLIS DRUMMOND,  
*Commissioner.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
*Tucson, Arizona, April 25, 1874.*

322 HON. WILLIS DRUMMOND,  
*Commissioner Gen'l Land Office, Washington, D. C. :*

SIR : I have this day forwarded by mail to your address the transcribed  
and authenticated field notes and approved plats of the surveys executed  
by Theodore F. White, D. S., under his contract of July 7, 1873, and  
herewith find account for same amounting to \$4,901.52. The surveys  
under this contract are as follows, viz : That portion of the first standard  
S. which makes the S. boundary of Tps. 5 S., Rgs. 8, 9, 10, 11, 12, 13, 14,  
15, 16, 17, 18, 19, 20, 21, and part of 22 W. The line between Tps. 6  
and 7 S., Rgs. 21 and 22 W., and exterior lines of Tps. 8 S., Rgs. 22, 23,  
and 24 W., 9 S., Rgs. 22, 23, 24, and 25 W., and 10 S., Rgs. 22, 23, 24,  
and 25 W., including a portion of second standard S. The subdivision  
lines of Tps. 8 S., Rgs. 23 and 24 W., 9 S., Rgs. 24 and 25 W., and 10  
S., Rgs. 24 and 25 W., together with meander lines therein, all of which  
refer to the Gila and Salt River meridian, Arizona.

The account for the above surveys is payable out of the appropriation  
for public surveys in Arizona for the fiscal year ending June 30, 1874.

Mr. White requests that in payment draft on Asst. Treasurer, San Fran-  
cisco, be sent to his address, care Commercial Bank, San Diego, Cal.

Plats of townships subdivided under the foregoing surveys  
323 have not been filed in proper district land office for the reason  
that is fully stated in my letter to Gen'l Land Office, of date  
March 17 ult. There is such evidence in this office that certain portions  
of the lands surveyed are claimed under a Mexican grant as to justify me  
in suspending these lands, in accordance with instructions from Gen'l  
Land Office, D., left corner, dated Febr'y 12, 1874.

Very respectfully, your obt. servt.,

JOHN WASSON,  
*Surveyor-General.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
*Tucson, Arizona, January 9, 1875.*

LEVI RUGGLES, Esq.,  
*Register U. S. Land Office, Florence, A. T.:*

SIR: I have this day forwarded by mail for the files of your office  
plats and descriptive lists of the subdivision of township surveyed by  
Theo. F. White, D. S., under his contract of July 7, 1873, and August 25,  
1873, as follows:

Township 8 S., ranges 22 and 23 W.	} Of the Gila and Salt River meridian.
" 9 S., " 22, 23, and 24 W.	
" 10 S., " 23 and 24 W.	

In the usual course these plats and descriptive lists would  
324 have been filed in your office previously to May 19, 1874, but  
have not been so filed because of covering land coming under the  
disignation "included within the limits of private land claims derived  
from the Spanish or Mexican authorities." In regard to surveyed lands  
so included, I was directed by the Com'r of the Gen'l Land Office by  
instructions of Febr'y 12, 1874, as follows: \* \* \* "If any land  
thus claimed has already been surveyed you are hereby directed to suspend  
all sections or parts of sections thus included."

Having lately become satisfied that the land in the aforesaid townships  
either wholly or in part was relieved of the suspicion of being included  
within limits of a Spanish or Mexican claim, I now file said plats and  
descriptive lists in your office with the remarks:

The lands in townships 8 S., R. 22 W., and 10 S., R. 23 W., are wholly  
exempt from claim under Spanish or Mexican title, within the present  
knowledge of this office, and are wholly open to entry.

In the following townships the land in certain sections and parts of sec-  
tions are believed to be claimed under Spanish or Mexican title, and in  
accordance with instructions I hereby suspend from entry the following-  
named sections of townships:

In township 8 S., R. 23 W.: Lots 4 and 5 of the N. W.  $\frac{1}{4}$  of sec. 22;  
the W.  $\frac{1}{2}$  of sec. 28; the whole of secs. 19, 20, 21, 29, 30, 31, and  
325 32. In township 9 S., R. 23 W.: The N. W.  $\frac{1}{4}$  of sec. 5; the N.  
 $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 7, and the whole of sec. 6.

In township 9 S., R. 24 W.: The N. W.  $\frac{1}{4}$  of sec. 24; the N.  $\frac{1}{2}$  and S.  
W.  $\frac{1}{4}$  of sec. 26; the whole of secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,  
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34.

In township 10 S., R. 24 W.: The N. W.  $\frac{1}{4}$  of sec. 3; the N.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 9; the W.  $\frac{1}{2}$  of sec. 20; the N.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 30; the N. W.  $\frac{1}{4}$  of sec. 31; and the whole of secs. 4, 5, 6, 7, 8, 17, 18, and 19.

And the sections and parts of sections not named in these several townships are wholly open to entry.

Very respectfully,

JOHN WASSON, *Surveyor-General.*

To which said exhibit the following certificate is attached, to wit:

OFFICE OF SURVEYOR-GENERAL,  
Tucson, Arizona, June 2nd, 1892.

I hereby certify that the ten papers attached hereto are a correct copy of the papers it purports to be a transcript of, on file in this office.

[SEAL.]

ROYAL A. JOHNSON,  
U. S. Surveyor-General, District of Arizona.

326 Which said exhibit bears the following endorsements: Ex. W.

Certified copy of letters of U. S. Surveyor-General John Wasson and Hon. Willis Drummond, Commissioner G. L. O., relating to suspension of lands covered by Paso de los Algodones private land grant claim. Certified June 2, 1892, by Royal A. Johnson, U. S. sur. gen'l. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed October 18, '92. James H. Reeder, clerk, I. L. Chaves, d'p'ty.

At this point court adjourned until 10 o'clock Thursday morning, December 15, 1892.

And be it further remembered, that afterwards, to wit, on the fifteenth (15) day of December, the same being the fourteenth (14) day of the regular December term, 1892, of this court, the following further proceedings were had, to wit:

ALGODONES LAND CO., PLAINTIFF,	}	D. 1. Santa Fe No. 47.
vs.		
THE UNITED STATES.		

327 On this day the above-entitled cause came on to be further heard, and there appeared Earl B. Coe, esq.; A. M. Stevenson, esq.; S. L. Carpenter, esq., and E. M. Sanford, esq., attorneys for plaintiffs in this cause, and Matt. G. Reynolds, attorney for the United States. Further oral and documentary proof was introduced by plaintiff in this cause, after which the same was argued for and on behalf of the United States by the United States attorney, Matt. G. Reynolds, esq.; the arguments not being concluded, the further hearing of the cause was continued until to-morrow.

Upon the continuance of the trial of this cause, on said above-named day, to wit, the 15th of December, 1892, the following testimony, oral and documentary, was introduced, to wit:

E. M. SANFORD, being recalled on behalf of petitioner, testified as follows:

Direct examination by A. M. STEVENSON, Esq.:

Q. How much time have you spent in the State of Sonora examining the archives and records of that State relating to grants of land made by the State?

1746—10.

- A. Something like four months in all.
- Q. Have you visited Sonora at any time other than this time?
- A. I have been there on four different occasions.
- Q. Did you in such examinations of the archives examine the hand-writings and hand rubrics of Jose Tamayo?
- A. Yes, sir; I have.
- Q. For what years did you find his writing in the different papers of the archives of the State of Sonora?
- A. In portions of '37, '38, and '39.
- Q. What positions did he hold in the State?
- A. As I would translate it, he was porter and scribner to Jose Justo Milla.
- Q. Do you mean Milla, the contador, and was he employed in the treasurer-general's office in a clerical capacity?
- A. Yes, sir; a clerk for the contador of the treasury.
- Q. Who was contador of the State of Sonora in 1838?
- A. Jose Justo Milla.
- Q. How do you know that Jose Tamayo held the positions that you say he held during the year 1838?
- A. I found in the archives a document which is as broad as a newspaper, which gave the necessary expenses, estimates of expenses for the closing year, and those expenses of the executive and judicial departments for the fiscal year commencing July first, 1838. It first states the names of the various officers—gives their salary and amount of expenses—Jose Justo Milla, then gives the first and second offices, and then gives the third offices—Bartolo Miranda, and then Julian Padilla, their scribners, Ancilia Auxicino; Jose Tamayo, he was put down in the list as "portria escribmento contodro de moninedas".
- Q. Did you examine any papers of the year 1838 which purported to be, or which were, signed or written by Jose Tamayo?
- A. I did not make a particular comparison of this handwriting
- 329 in the list with Tamayo's, but on last Thursday I found a record there on separate sheets of paper with the seals of '37, '38, and '39, which were the records of stock brands for that year, and they seemed to have formed, in making them, a specified form, and on the side is the shape of the stock brand. Those, a majority of them—yes, I may say seventy-five per cent—are in the handwriting of Jose Tamayo, and they were in the form—Jose Tamayo certifies so and so, and Bartolo Miranda certifies so and so.
- Q. Explain, if *the* you please, to the court what kind of a record book it was that these different sheets of writing of Jose Tamayo composed?
- A. It is on the regular sealed paper, issued and stamped, same as was used at that time; it was composed of separate sheets of papers.
- Q. Did you take any of these sheets of paper, upon which were found Jose Tamayo's handwriting, and compare them with his writing as found on the different sheets of paper in the original matrix or expediente in this case?
- A. Yes, sir; a good many of them, fifteen or twenty very carefully.
- Q. I will ask you to examine the handwriting found in the exhibit of the Government, marked photograph number three of phot'graph exhibits, filed before the surveyor-general of Arizona, and being, or purporting



to be, a phot'graph of one of the pages of the original expediente of title issued to Fernando Rodriguez of the land in controversy, in 1838,  
330 and state whether or not the writing found *found* on this photographic copy is, in your opinion, based upon an examination and comparison made by you, the handwriting of Jose Tamayo, or state in whose handwriting it is.

A. That is in the handwriting of Jose Tamayo.

Q. Explain, if you please, what comparison you made of this handwriting in arriving at that conclusion.

A. I placed these sheets one at a time beside the writings in the title in this case, first on the place referred to as Photographic Exhibit three, and then at the several offers of sale, and the last one to Rodriguez, as found in the original matrix, and I concluded they were certainly in the handwriting of Jose Tamayo. I mean these sheets on which the stock brands were made; each sheet formed a separate record of a stock brand; after finishing one they would commence another sheet and make a stock brand for somebody else; I took each one of these sheets, put it down beside this matrix, and examined it in that way.

Q. Examine, if you please, the writing upon the last part of page number thirteen of the book referred to in my last question, the same being photographic copy of the portion of the original expediente in this case and signed with the word Milla, and state in whose handwriting the latter portion of that page or photographic copy is?

A. This handwriting in Government exhibit, photograph No. thirteen, the latter part of the photograph, is in the handwriting of Jose Tamayo, to the best of my judgement; I am certain of it.

331 Q. Did you make the same comparisons with that portion of the instrument, expediente original, that you did with other portions of the instrument about which you have testified?

A. I have not made the examination with the original matrix, for the reason that it is doubtful—

(Did not catch the rest of the reply of witness.—Steno.)

Q. Were there any other portions of the original expediente or matrix in the handwriting of Jose Tamayo?

A. The page of the third auction sales is in the handwriting of Jose Tamayo. I am not so certain about that handwriting there [indicating]; the "p's" are the same and the writing has the same general formation, but I didn't make so much of a comparison with this.

Q. Did you make careful comparison of the first part?

A. Yes, sir. I spent a whole day on it.

Q. Was there any difficulty in determining that the writings were the same when placed side by side?

A. No, sir; it was difficult to say where the commencing of one was and the ending of the other; except the phrase the names were the same.

Q. Did you find any handwriting of Jose Tamayo in the book of the year 1853?

A. These papers are kept in boxes that are shaped like a book; they are probably four inches thick, and probably twelve by fourteen,  
332 and have a trap door that they open, and all these lists, papers, borradores, and official documents received during these years are kept loose in these boxes; some times they have been taken up and fixed together in the shape of a book.

Q. Did you make any particular comparison or examination of the contents of these boxes for 1838? Have you never made any comparison of these?

A. Only to find out the handwriting of the documents and whose it was. I went over every matrix and every paper that was loose there and examined it.

Q. From the comparison and examination of these different papers which you saw, often loose records, can you describe the manner matrixes are made up?

A. The matrix is a book made up of these loose sheets, which represent the steps taken, which are sewed up together and form a sort of a book, maybe one-quarter to one-half an inch thick.

Q. You say into this box are placed loosely many leaves, official documents, borradores, &c., and they form, when put together, what we call the original copy or matrix?

A. Yes, sir; also other papers are in them referring to it. Correspondence between various officials are placed in here loosely, and also other documents and a great many papers that do not belong to the same, and some of the papers may be in other documents.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney.

333 Q. Did you say the matrix was entirely in the handwriting of Jose Tamayo?

A. No, sir.

Q. How many different handwritings are there in that matrix?

A. Several. Mr. Rodriguez' is one handwriting; Mocio—Par—appointing the surveyor, is on the handwriting of some one else. I think that is Carrillo's handwriting; it is a peculiar and is very dissimilar to any I could find.

Q. Did you ever determine who wrote the balance of it besides Tamayo?

A. Much of it there is the handwriting as shown in Government photograph exhibit number one, and there is portions of documents there in writing like Government exhibit number two, though I am not certain as to who it is; there is handwriting of Jose Tamayo, as that appearing on Government exhibit number three, seven, and eight, and the lower half of exhibit number thirteen; and that is another handwriting as that shown in the top of Government exhibit number thirteen, which I have formed the impression was the handwriting of Jesus Frasquillo; there are various handwritings in the office like it. And there is another handwriting which appears on the certified copy of the corga y data; that handwriting I am inclined to think is Bartolo Miranda's.

Q. Did you, in undertaking to determine who wrote this instrument—did you undertake to compare it with other matrixes on file in the office?

334 A. Yes, sir; many other documents.

Q. Did you find the same handwritings?

A. In many of them.

Q. Why didn't you make a note of the fact of what you could find in other Spanish documents?

A. The day that we started in to make the comparison with these handwritings I was not familiar with them, and I was on that examination

only a couple of days, and was there alone ; I went over them, and when I found anything like it I would take it down and compare it.

Q. When you might find, in comparing, another matrix like the writing in the body of this matrix, you didn't make any note of the portion which you compared ?

A. No, sir.

Q. Did you compare it with the Sargento matrix ?

A. Yes, sir ; I had the Sargento before me and would put the two, the Sargento and Algodones, before me and examine them with the others in that way.

Q. What did you see about the Sargento and this matrix ; does the handwriting in it correspond with those on this ?

A. On the Sargento, for instance, the Toma de Razon on the Sargento is on the top of the page, while in this it is on the bottom of the page.

Q. Is the Toma de Razon on the matrix's written by the same man on both ?

A. Yes ; I believe so.

Q. And is the petition written by the same man in both ?

335 A. I can't say about that ; I made no comparison of the petition.

Q. Did you make a comparison of each sale, and were they written by the same person ?

A. Yes, sir ; by the same man.

Q. Did the different days correspond ? For instance, the twenty-fifth of the month, did that correspond with the twenty-fifth of the month on the Sargento ?

A. I could not be positive. My impression is that the commencement of the proceedings are alike, and the auction sales are alike ; the proceedings before the junta de almoneda are in the same handwriting, I am not positive ; and I know also the Toma de Razon is in the same handwriting.

Q. In order to determine who wrote the body of any instruments or grant matrix's did you compare the matrix in this case ?

A. Yes, sir ; in certain other books ; in the book called " Derecho de Fincas," on the cover—it is a sheepskin cover—is the name of the book. The paraphis of the man who kept the book, it is the maraph of Jesus Frasquillo.

Q. In those examinations did you find that this fellow, Jose Tamayo, did you find any of his handowritings ?

A. I said—

Q. Is not the only reason that you know his handwriting here is the fact that his name appears on it ?

336 A. No, sir ; his estimate for salaries and expenses for the fiscal year is in the handwriting of Jose Tamayo, but his name simply appears on there, and that is how I got to know that he was a clerk in the office ; but his handwriting appears particularly in the stock brands for that year, in which he says, Jose Tamayo declares so and so ; his name is in the certificate.

Q. How did you determine him to be a clerk in Milla's office ?

A. By this estimate of expenses for the fiscal year ; the pay role, though, it is not exactly a pay role.

Witness excused.

Mr. STEVENSON. We offer a translation of the testimonio filed in this case, made by R. C. Hopkins and attached to the original petition.

(Which said translation of said testimonio is attached to the petition in this case and marked Exhibit B thereof, and the same is incorporated in this transcript as Exhibit B of said petition, commencing on page 12 hereof.—Clerk.)

Mr. STEVENSON. We offer translations of the exhibits that are written in Spanish which have heretofore been offered in evidence.

And petitioner rests.

Mr. REYNOLDS, U. S. attorney, on behalf of the defendant, the United States. I offer in evidence, if the court please, the deposition of  
337 Mr. R. C. Hopkins, taken at Hermosillo in May, 1892. (Defendant's Exhibit A.)

Which said Exhibit A is in the words and figures following, to wit:

R. C. HOPKINS, being duly sworn on behalf of the United States, testifies as follows, to wit:

Q. State your full name, age, residence, and occupation.

A. Rufus C. Hopkins; 76 years of age; residence, San Francisco, California; at present no special occupation.

Q. State fully and completely what has been your occupation from time to time for the last forty years.

A. From 1852 until 1855 I was clerk of one of the courts at San Francisco; from 1855 to 1885 I was in the Federal service, employed by the Government in connection with Mexican and Spanish land grants located in the State of California and in the Territory of Arizona. In California I had charge of the archives of the former Spanish and Mexican governments. My duties were to take care of the archives, furnish copies and translations thereof when required, to give testimony to the United States relative thereto when called upon by the Government or private have a claim pending before the courts of the country. In this service I was occupied in California from the 3rd day of Nov., 1855, until the early part of the year 1879, when I was sent by the Department of the Interior as a special agent to Mexico to examine the public records of that country in order to ascertain what grants might have been made by the Spanish and Mexican Government, within the Territory of Arizona, having, however, in the year 1872, been employed by the Texas Pacific R. R. Co. to visit Mexico in order to ascertain what grants might be found relative to the lands in southern Arizona. In this service, although I held a commission from the Secretary of the Interior, I was paid  
338 by the Texas Pacific Company and was not employed by the Government.

Q. During the time you were in the employ of the Texas Pacific did you receive and pay from the Government as special agent?

A. I did not.

Q. Your commission was to enable you to obtain access to the archives was it not?

A. It was.

Q. Who obtained it for you?

A. It was obtained by Mr. B. Bristow and Mr. Thos. Scott of the Pacific R. R. Co. I was specially notified in the commission that I was to look to them for my pay.

Q. You are famil'ar with the Spanish language, could write it, translate it into English, and English into Spanish, could you not ?

A. I could.

Q. State whether or not you have an extensive knowledge of the Spanish language and the terms used in Spanish and Mexican documents relating to grants of public lands.

A. I have such knowledge as would naturally be acquired in the service in which I have been engaged since the year 1855.

Q. During this time did you have occasion to examine many Spanish and Mexican grants, and the records thereof, as to the regularity in making the proceedings to the same ; also comparing Spanish and Mexican documents and records to determine the question as to the genuiness  
339 of the instruments themselves and the signatures of various officials attached thereto ?

A. There were a number of grants in California which, upon carefully examination, were shown to be simulated or forged which had been confirmed by the board of land commissioners during the commencements of the proceedings of that board. These claims were brought before the U. S. district court. They were examined with extreme care ; in fact all of the grants were. Most of my time during the first years of my service for the Government in this matter was taken up in such examinations and in giving testimony for the U. S. courts.

Q. State whether or not and when and under what circumstances you ever made an examination of the archives of the State of Sonora in relation to the grant commonly called El Paso de los Algodones, claimed to have been made to one Fernando Rodriguez in April, 1838L

A. My first examination of the archives in the State of Sonora was made during the spring of 1873, when I was in the service of the Texas Pacific R. R. Co. At that time my examination were made *coursely*, my object being to ascertain what grants were on file for grants in the southern portions of Arizona.

At this time I found among the other grants grant of El Paso de los Algodones. I made my *my* report to the president of the Texas Pacific R.

R. Co., but made no report to the Government. In 1879 I was sent  
340 by the Department of the Interior to examine the archives in Sonora and other portions of Mexico relative to grants of lands in Arizona, and was instructed to make careful examinations relative to such grants for the locations, character, and all things showing whether they were genuine or not. On this examination I again examined the record of the Algodones grant with others I found for lands in Arizona ; made a report to the Governmen' relative thereto about the month of August 1879, I think. In this report I expressed my opinion as to the character of the grants I examined, which report is on file in the General Land Office at Washington, and also in the office of the U. S. surveyor-general of Arizona. I subsequently made several examinations of the archives of Sonora under special instructions from the U. S. surveyor-general of Arizona, during one of which examinations I procured a number of photographs from the

archives to be used as exhibits in the report to be made to the U. S. surveyor-general of Arizona, to Com. Gen. Land Office relative to the grant Algodones.

Q. During these various examinations, and particularly the last two, I'll get you to state whether or not you examined and compared the writing contained in the body of the matrix of the Algodones claim, also the signature of the granting officer, Jose Justo Milla, with other records and archives in the office, with a view of determining whether the same was genuine or not.

A. I did.

Q. Did you do the same thing with the testimonio that was  
341 filed with the surveyor-general?

A. I did.

Q. Did you also make at that time a comparison with the original matrix of the grant commonly called La Punta del Sargento to Fernando Rodriguez, made April 12th, 1838, being same date as the Algodones grant?

A. I did, being especially instructed to do so by the surveyor-general of Arizona.

(Witness here shown photographic Exhibits 1 to 23, inclusive.)

Q. Were these photographic exhibits shown you taken under your supervision and direction as special agent of the United States under instructions of the surveyor-general of Arizona?

A. I recognize these as the photographs which I procured to be taken in the month of July, 1880, although I have not seen them since that year. When these photographs were taken I was recovering from a very severe wound which at first was supposed to be mortal; gave Mr. Mendez, who was at that time in the office of the archives, a list of the papers in the Algodones and Sargento grants; these he brought to the hotel where I was stopping, and they were there photographed by a photographer from Tucson. I also requested Mr. Mendez to bring me several documents from the archives as near the date 1838 as he could find containing the signature of Jose Justo Milla, the work occupying several days. I will remark,  
342 however, on the first of January, 1880, I had gone to Hermosillo to examine the archives relative to this grant, and knew the documents which I required.

(Witness shown the original matrix of the Algodones and Sargento grants.)

Q. Mr. Hopkins, compare these two matrix's, one being the Algodones and the other Sargento, and state whether, in your opinion, they were written by the same person; also compare with them the testimonio that was filed with the surveyor-general of Arizona.

A. The testimonio is in a different handwriting from the matrix and is not in the same handwriting of the matrix, and might have been made by a clerk. All testimonios are copies.

Q. State whether or not these two matrix's before mentioned were written by the same person.

A. These two documents are in the same handwriting. Not that they were all written by the same person.

Q. Get the first signature of Milla, on page 3 of the matrix, and compare it under the glass with the signature "Milla" as found on page 2 of



Derecho de fin cas Urbanas (taxes on city property). State whether or not, in your opinion, they were written by the same person.

A. My opinion is that they were not. In the words "Milla" found in the tax book the entry of July 8, the letters are all disconnected, while in the same word as found in the matrix referred to are all connected  
 343 save the last letter "a" with a marked difference in the letter "M" as found in the matrix, and besides there is a manifest difference in the word taken as a whole. The rubrica under the word Milla, as found in the tax book, is gracefully made without any apparent hesitation, commencing with a small hook, while the rubrica on the matrix is evidently made slowly, as it *it* might have been traced over a glass showing a break in one place, where the pen has been taken up, and it commences with a different motion of the pen and presents a stiff appearance not shown in the one in the tax book.

Q. Compare the words "Milla" on the reverse side of page 14, and on page 15 and 17, and on the reverse side of page 17, with the word "Milla" on page 2 of the book above referred to, under the glass, and state, in your opinion, whether those in the matrix were written by the same person who wrote the word "Milla" on page two of the book. You may make the comparison with both words "Milla" on page 2 of the book.

A. I think not.

Q. Examine the signatures Jose Justo Milla, being the third signature in the matrix, and on the reverse side of page 18 of the matrix, and compare it under the glass with signature of Jose Justo Milla on page 60 of date July 5, 1836, of book on consumption of goods, and state whether, in your opinion, they were written by the same person.

A. I think not.

Q. Examine the signature next to the last in the matrix, Jose Jose  
 344 Milla, with the signature Jose Justo Milla in the book and page above referred to and state whether, in your opinion, they were written by the same person.

A. I think not.

Q. Examine the last signature in the matrix, Jose Justo Milla, with the signature on page 60 of the book referred to above. State whether, in your opinion, they were written by the same person.

A. I think not.

(Witness shown original testimonio and also one of the matrix of title exhibited to the witness V. Aguilar on yesterday.)

Q. Please examine the pages of each of these documents shown you, under the glass, and state whether, in your opinion, they were written by the same person.

A. I think not. I don't think they are the same handwriting.

Q. In your examination of the archives of Sonora did you ever find where Milla, in writing his full name, wrote it Jose Jose Milla, as appears in next to the last signature in the matrix in this case?

A. Accord'ng to my recollection, I never did.

Q. State whether, in your opinion, from all the examinations you have heretofore made and the examination made here to-day, you believe the signatures of "Milla," Jose Justo Milla, Jose Jose Milla, to be genuine or not.

A. From the examinations heretofore made by me, as well as  
 345 from the examinations made by me to-day, I am forced to reiterate the  
 opinion which I gave before the surveyor-general of Arizona, in 1880,  
 that the signature of Jose Justo Milla, as found in the grant under con-  
 sideration, are not genuine, and all the signatures examined by me to-day  
 of Milla to grant are not genuine.

Cross-examination :

Q. One of your main reason' for being suspicious of this signature was  
 founded on the fact that, at the time you made your report, you were of  
 the opinion that Jose de Aguilar was not governor of Sonora June 8, 1857?

A. I think not.

Q. Did you not report to Mr. Wasson that he was not governor on that  
 day?

A. Possibly I did ; I don't remember.

Q. Did you not also report to Mr. Wasson to the effect that the terms  
 of the petition were remarkable and unusual in this, that settlement and  
 occupation of the lands petitioned for shall be when the notorious condi-  
 tion and circumstances of the country in which the tract is situated may  
 permit?

A. I think I did.

Q. Was not one of your main reasons for being suspicious of this  
 title?

A. It was not.

346 Q. In all your examinations you thought you were careful in  
 making them?

A. I aimed to be, so far as possible.

Q. Your examination, then, was of the same character—as close as you  
 have made here to-day?

A. It was much more careful and lengthy than the one made to-day.

Q. Did you not, then, find many signatures of " Milla " where the " l's "  
 were connected?

A. I do not remember. Possible ; I can't tell.

Q. Do you say that there are no signatures of " Milla " where the " l's "  
 are connected?

A. No, sir.

Q. Did you, then, ascertain whether the " M " in his name were writt'n  
 differently at some times than at other times?

A. I do not remember.

Q. Do you say that he did not commence his " M's " differently and  
 write them differently in some than in others?

A. No, sir.

Q. Did you ascertain in you' examination that some of the rubrics to  
 his signature were disconnected?

A. That I cannot remember.

Q. Do you not know that in many of his rubrics the pen has been  
 disconnected?

A. No ; I do not know. It may be so. I do not remember that  
 347 I examined his rubrics for the special purpose to ascertain whether  
 they were connected. I remember having examined them as to  
 their general appearance and expression. More than that I do not  
 remember.

Q. Do you know what kind of a pen was in use here in 1838?

A. I do not. I presume, however, a quill pen.

Q. Did you, then, examine the signatures of his for the purpose of ascertaining whether or not his rubrics commenced with the same flourish or stroke?

A. I do not remember.

Q. Did you examine his rubrics for the purpose of determining the inclination, heaviness, or lightness of the stroke?

A. I do not remember. All that I now remember is that I made a careful comparison of the rubrics in order to ascertain their similarity or dissimilarity.

Q. Are there not many hundreds of his signatures in this office?

A. I presume there are; he was a public officer.

Q. Didn't you ascertain that fact in your many examinations of this grant before?

A. Perhaps I did.

Q. You have not examined but four of his signatures to-day?

A. I think I have only examined only four. How many I examined before I don't remember.

Q. Does not Milla write his name differently as to special characteristics, like connections or disconnecting the letters of his Christian name?

A. He probably does.

Q. I now ask the same question as to the word Milla in his name?

A. He probably does.

Redirect by REYNOLDS:

Q. In your examinations prior to 1879 state whether they were made with a view of ascertaining by comparison the genuineness of the documents or merely to ascertain the existence of the grant and the state of the archives in reference thereto?

A. They were made only to ascertain what records were found in the archives, grants in the southern portions of Arizona.

R. C. HOPKINS.

JOSEPH R. REED,

*Chief Justice.*

Mr. REYNOLDS: I offer in evidence the Government's photographic Exhibits 1 to 23, inclusive.

Mr. STEVENSON: I desire to object to the introduction of these exhibits. I make no objection to any photographs that they may offer; but I object to the speech of the special agent attached to that document, and do not think it is proper to go in the record; also the writing of the surveyor-general of Arizona on the back of photographic exhibits of the Government.

By the COURT: Admitted, subject to the objection.

349 Which said exhibits are enumerated as follows: Being twenty-three photographs of different sized, on like number of pages of a book endorsed: "El Paso de los Algodones Grant. Photographic Exhibits 1 to 23, inclusive. On the part of the United States," which said photographic exhibits are identified from one (1) to twenty-three (23), inclusive. It being impossible to attach said exhibits hereto, the same are put under separate cover, forwarded herewith, and made a part of this transcript.

Mr. REYNOLDS: I offer the report of the surveyor-general on the case, and also offer supplemental report of surveyor-general, signed by him, and attached to the back of these photographic exhibits, marked defendant's Exhibits B and C, respectively.

Mr. STEVENSON. Objected to as incompetent.

Which said Exhibit B is in the words and figures, following to wit:

U. S. SURVEYOR-GENERAL'S OFFICE,  
TUCSON, ARIZONA, Aug. 12th, 1880.

The papers upon which the examination of this case is based were filed in this office Dec. 22, 1879, and they are, with the records in relation thereto, found in the archives of the Mexican State of Sonora for a place called "El Paso de los Algodones," near the junction of the Colorado and Gila rivers. The terms of the petition are remarkable in some particulars, in that they are not found in the petition of any other case within my knowledge. Petitioner states that he makes the registry under the  
350 conditions that the settlement and occupation of the land petitioned for shall be when the notorious condition and circumstances of the country in which the tract is situated may permit, setting forth that the said tract lay in a desert country, and one uninhabitable, because of the hostility of the savages. It was quite as unusual for citizens of Mexico to petition for grants of lands which could not be occupied as it was for the Mexican authorities to grant lands without the conditions of ability and purpose to immediately or within a stated time inhabit and cultivate or graze the same.

Early in the investigation of this case several circumstances therewith aroused suspicions in my mind as to the bona fides of the papers upon which title to said land was based. I therefore regarded as necessary that a special and very critical examination of the proper archives in Sonora be made, so far as they might affect this case, to th' end that my suspicions be removed or confirmed. I caused such an examination to be made (in January last) by Mr. R. C. Hopkins of this office, he being specially fitted for the work. The leading facts discovered by him and reported to me are embraced in his sworn testimony, which is a part of the transcript of the case, and are as follows:

That on the same day that Fernando Rodriguez petitioned for the place of El Paso de los Algodones he also petitioned for a place called "La Punta de Sargento," situated on the Gulf of California, containing ten square leagues.

351 That the language in petitions in the two cases is very similar; that the several orders in the proceedings in both cases are dated on the same days, are in the same handwritings, and these handwritings and these handwritings are different from all the handwritings in the proceedings of the various grants made and recorded in 1838; that neither of said grants are registered in the book of Toma de Razon for the year 1838, nor in any other book of record in the archives; that these two grants purport to have been made by Jose Justo Milla as contodor (auditor) of the treasury, acting "por ministerio de la ley," or ex officio, Jose Ma. Mendoza being at that time treasurer-general; that the same names appear in both cases as assisting witnesses in the proceedings; that the signatures of Jose Justo Milla, where they occur in both cases, appear to

have been written with the same ink and bear a striking resemblance to each other, and these signatures are notably different in appearance from those of Jose Justo Milla as found in the archives on documents of undoubted genuineness of near the same date of these grants, and that the difference is especially manifest in the rubrica or flourish attached to the names; that one of the signatures of the said Milla as found in the original proceedings of the Paso de los Algodones grant and now in the Mexican archives of Sonora is written thus, "Jose Jose Milla;" that the signatures of Santos Vigarria and Jesus Trasquillo, whose names appear as assisting witness in the proceedings of the two grants, are notably different in appearance from the same signatures as found on genuine documents of near the same date and now in the archives; that the grants of Paso de los Algodones and La Punta del Sargento are both dated April 12, 1838; that to the proceeding *a* in both cases is attached a certificate purporting to be signed by Jose Justo Milla that the purchase money was paid by the grantee, and also one by Juan J. Encinas, certifying that the petitioner, Rodriguez, possessed sufficient means to stock the lands petitioned for.

In view of the extraordinary facts bearing on these cases, as reported by Mr. Hopkins and summarized above, I deemed it absolutely necessary to procure photographic copies of some of the signatures and portions of the documents referred to as they existed in the Mexican archives in Sonora to enable me to fairly, clearly, and fully place the case before Congress, and such copies are appended hereto as *inhibits* to this report, so arranged and marked as to be readily understood. An inspection of these photographic exhibits shows:

1. That the petitions for the grant of Paso de los Algodones and La Punta del Sargento were made on the same day by the petitioner, Rodriguez, using almost the same language in both petitions, in the Algodones describing the land as being "complemente dedierto (completely desert) and in the Punta del Sargento saying that the land is "enteramente dedierto y arido" (entirely desert and arid), and in both cases agreeing to occupy the land when the conditions of the localities might permit him to do so.

- Nos. 1 and 2 of the photographic exhibits show the petition of Rodriguez for El Paso de los Algodones and Nos. 10 and 11 are copies of his petition for La Punta del Sargento. That Rodriguez should, on the same day, petition for two tracts of land hundreds of miles apart, both desert and one arid, for purposes of cultivation, to be occupied at some future time, is certainly remarkable and somewhat astonishing in view of the laws, usages, and customs of Mexico governing the granting of public lands.

2. That the signatures of Jose Justo Milla, the granting officer, in both grants are made by the same hand.

3. That a comparison of the signatures of Jose Justo Milla as found in the title papers of "El Paso de los Algodones" and the La Punta del Sargento" with the signatures of that officer as shown in Nos. 15, 16, and 17 of photographic exhibits demonstrates beyond question that they are but bungling forgeries.

4. That if there were any doubt as to the character of these signatures the fact that No. 8 of photographic exhibits shows the name of Jose Justo Milla written "Jose Jose Milla," would settle that doubt.

Milla was evidently no party to this fraud. Had he been, even if imposed upon, he would have signed his name accurately and in his accustomed manner; and, if not imposed upon, the strong presumption is that he would not have performed his part in such a careless, awkward, and incorrect way as appears in the original proceedings now in the Sonora archives, and perfectly illustrated in the photographic exhibits. It is

as extremely improbable that Jose Justo Milla signed his name,  
354 under any any circumstances, Jose Jose Milla as that Joseph John Brown would sign his "Joseph Joseph Brown" to a document conveying large interests and the doing of which would involve great responsibility.

5. That a comparison of the signatures of Jesus Trasquillo as found in the title papers of the two grants referred to with those on Nos. 18, 19, and 20 of photographic exhibits, show beyond doubt that they were not made by the same hand, and a like comparison shows that the signature of Santos Vigarria as found in the said grants is unlike the signature of Santos Vigarria as shown by No. 21 of photographic exhibits.

6. That No. 22 of photographic exhibits shows the page of the book of "Toma de Razon," in which the grants of El Paso de los Algodones and La Punta del Sargento should have been registered, if made on April 12, 1838, as set forth in the title papers; and since twenty-one (21) other grants made in 1838 are found registered in said book, it is a very suspicious circumstance that neither of these grants are therein registered, nor are they in any other book of record.

It will be observed that the note of registry as found on the expediente of the grant of El Paso de los Algodones merely states that "that the grant is registered in the corresponding book," without referring to page.

In notes of registry on expedientes it was customary to refer to the page of the book on which the registry was made. The omission  
355 to register these two grants in the "corresponding book" was one of necessity, because it was impossible to make entry of them in said book at the proper place and of the date April 12, 1838, as shown by photographic exhibit 22.

The inquiry naturally arises as to the motive for manufacturing a grant for the desert and arid tract of La Punta del Sargento. The answer to this seems to be: The rancho of El Paso de los Algodones was the objective tract in the proceedings, and that of the Punta del Sargento was a fabrication to sustain the Algodones on the hypothesis that the Algodones was antedated as well as forged; the parties engaged therein would very naturally suppose that the bona fides thereof might at some time be inquired into, and if the records in the archives of Sonora would show a grant executed simultaneously with it the fact would strongly tend to prove that it (the Algodones) was made in good faith and at the time of its date.

It is true, a careful inspection of the record of the grant of La Punta del Sargento would reveal its superior character, but such an inspection would be highly improbable in connection with an examination of another claim before the tribunals of a foreign county.

The title papers in this case are certified to by Jose Ma. Mendoza to be genuine, who for many years was treasurer-general of the State of Sonora, and also by Jose de Aguilar, ex-governor of the State and at present the



leading lawyer of Sonora. Such certificates as these are unusual to grants of undoubted genuineness and excite suspicion among men well informed in the premises. The inquiry naturally arises, why should the Algodones grant be supported by this class of testimony any more than other grants made by the Mexican authorities of Sonora? No genuine Mexican grant papers filed in this office have supporting certificates.

It will be observed that Jose Aguilar, in his certificate, styles himself governor of the State of Sonora, whereas the history of the times shows that at the date of his certificate, June 8, 1857, Ignacio Pesquierra was governor of said State. This indicates that the certificate was given without much care. Notwithstanding the certificates of Mendoza and Aguilar are genuine and may have been executed in good faith, they do not give any value to a fraudulent title paper. The records of the United States district court for California, and also the United States Supreme Court, relating to title to grants of land by the Mexican authorities, repeatedly show that the testimony of Mexican officials was not and could not be accepted as conclusive. The cases in point are so numerous as to render citations superfluous.

#### LAND NONMINERAL.

Little testimony appears in reference to the mineral character of the land in this case. I have passed over it many times, and personally know it to be nonmineral; that is, it is utterly worthless for minerals. It is nearly all flat and rich, lying in the Colorado River bottom and skirted by low and barren table-land far from mountain or any elevated country. Feeling certain that the United States will never confirm the claim under consideration, I deemed it unnecessary to swell the record with oral testimony on incidental points.

#### DERAIGNMENT OF TITLE.

The title of this alleged grant seems to be satisfactorily deraigned. Such as it is it rests in the Colorado Commercial and Land Company, and, if genuine, should be confirmed to the said company.

#### CONCLUSION.

I have patiently investigated all the important facts bearing upon this case, and have brought "the title papers to the test of the genuine signatures" at considerable expense to the Government and delay to the claimants and an interested public. I have illustrated the fraudulent character of the title papers by perfect photographs of parts of documents in the Mexican archives in the State of Sonora, the originals of which could not be obtained nor lawfully removed from the custody of the Mexican officials. Some of the documents referred to have no connection with any books of record in the archives, and but for the photographs taken they might have been abstracted from their place on file, and thus prevented any clear demonstration of the fraudulent character of the claim under consideration. Aside from the principle involved in this case, the land in question, owing to its locality, has a large pecuniary value, and therefore

I pursued the investigation until every reasonable doubt about the true character of the claim was removed. I have no hesitation in pronouncing the title papers to the rancho of "El Paso de los Algodones" both forged and antedated; therefore, my recommendation is, that the said claim be not confirmed, but rejected.

JOHN WASSON,  
*U. S. Surveyor-General.*

Which said document bears the following endorsements: No. 9½ El Paso de los Algodones. F. No. 13. Opinion and recommendation by surveyor-general. Dated August 12, 1880. Recorded in journal vol. 2 pages 20 to 24. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed August 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Which said Exhibit C, heretofore introduced in evidence on behalf of the defendant, which is a supplemental report of said surveyor-general, is attached to and a part of the book of photographic exhibits heretofore incorporated in and made a part of this transcript, and is explanatory to said exhibits, is attached to the back page thereof, and reference is hereby made thereto for defendant's Exhibit C.

Mr. REYNOLDS. I offer report of R. C. Hopkins, made to the surveyor-general. (Defendant's Exhibit D.)

Mr. STEVENSON. I object to it as incompetent.

359 Which said Exhibit D is in the words and figures following, to wit:

Before the surveyor-general of the United States for the Territory of Arizona.

In the matter of the petition of the Colorado Commercial and Land Company for the confirmation and survey of the Rancho El Paso de los Algodones in the Territory of Arizona, situated at the confluence of the rivers Gila and Colorado, containing five square leagues, more or less.

Interrogatories to be administered to Rufus C. Hopkins, a resident of the city of Tucson, in the county of Rima, in said Territory.

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Interrogatory 2nd. Have you ever resided in San Francisco, in the State of California? If yea, how long did you reside there, and what official positions, if any, did you occupy during your residence there?

Interrogatory 3rd. Did you ever occupy any official position in or in connection with the office of surveyor-general of the United States of California? If yea, what position? How long did you occupy it, and what were your particular duties in that position?

360 Interrogatory 4th. Do you read and speak the Spanish language? Of so, for how long a time have you been able to speak and read it?

Interrogatory 5th. State if you, during your residence in California, were accustomed to the examination of the Mexican and Spanish title papers having reference to the grants of land made by the Mexican Gov-

ernment within the limits of California before its cession to the United States. If so, did you ever have custody of them, and for how long a time?

Interrogatory 6th. State particularly and fully your opportunities for acquiring a knowledge of the Spanish language, of the signatures of the officers executing or certifying the grants spoken of, and of particular rules or regulations adopted and observed with reference to the making of said grants.

Interrogatory 7th. State if you hold any official position now in the office of the surveyor-general of Aruzona, what it is, and what your duties are.

Interrogatory 8th. Didn you ever visit the State of Sonora in 361 Mexico, or the City of Mexico, or both, for the purpose of investigating the titles to lands in Arizona that had been granted by the Republic of Mexico or the State of Sonora? If yea, by what authority did you go there and how far did your investigations extend?

Interrogatory 9th. In those investigations did you find or examine the original title papers or records of the grant of El Paso de los Algodones hereinbefore mentioned? If yea, state how thoroughly or critically you examined them.

Interrogatory 10th. Are you th' same person who deposed to the correctness of the translations of the title papers of the said Rancho El Paso de los Algodones, which appears attached to the written translation on file in the surveyor-general's office of Arizona which purports to have been subscribed and sworn to by you in the city and county of San Francisco, California, December 6th, 1873? If yea, state if the translation was made by you.

Interrogatory 11th. If you know of any other matter or thing relating to the title papers of the said rancho, tending to throw any light on the application for the confirmation and survey of said rancho, or which may be of importance in respect to said application, state the same as fully as though specially interrogated thereto.

L. ALDRICH,

*Attorney for Petitioner, 20 Montgomery St., San Francisco.*

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LEWIS LILLIE,

*Secretary of the Colorado Commercial and Land Company,  
20 Montgomery St.*

The said RUFUS C. HOPKINS, being first by me duly sworn true answers to make to the foregoing interrogatories, answered as follows:

To interrogatory 1st. My name is R. C. Hopkins, age 64 years, occupation clerk in the office of the U. S. surveyor-general for Arizona, and at present reside in Tucson.

To interrogatory 2nd. I resided in San Francisco, California, from 1850 to April, 1879, and during my residence in that place I had charge of the Spanish archives in the office of the U. S. surveyor-general for California from the year 1855 till the commencement of the year 1879, with some interruptions.

To interrogatory 3rd. I have answered this interrogatory in my answer to 2nd interrogatory.

To interrogatory 4th. I read and speak the Spanish language, and acquired a knowledge thereof in early life.

To interrogatory 5th. During my residence in California for 24 years I was custodian of the grants of land made by the governments of  
363 Spain and Mexico within the limits of the State of Cal'a before the cession of the territory to the United States.

To interrogatory 6th. I acquired a knowledge of the Spanish language in early life by study; for twenty-five years I have been daily conversant with the language, the handwriting, and signatures of many Spanish and Mexican officials, and with the rules and regulations observed in the making of land grants.

To interrogatory 7th. I occupy the position of clerk and Spanish translator in the office of the U. S. S. Gen'l for Arizona.

To interrogatory 8th. In the early part of 1873 I visited the State of Sonora and the City of Mexico in the service of the Texas Pacific Railroad Co. for the purpose of examin'g the records in relation to grants of land made by the Spanish and Mexican governments of lands within the present Territory of Arizona. During the examination I made a list of such grants as I found in the archives at Sonora of lands within the Territory of Arizona. Subsequently, in the month of April, 1879, I again went to Sonora as special agent of the Government for the purpose of obtaining from the archives all data therein found in relation to Spanish and Mexican grants of land within the Territory of Arizona.

364 To interrogatory 9th. In both of the examinations above referred to I examined the title papers of the rancho of El Paso de los Algodones.

To interrogatory 10th. I am the same person who deposed as to the correctness of the translation of the title papers of the rancho El Paso de los Algodones on file in the surveyor-general's office for Arizona; said translation was made by me.

To interrogatory 11th. In the early part of 1873, I was employed by the Texas Pacific R. R. Co. to make an examination of the Spanish and Mexican archives of the State of Sonora and to report such grants as I might find located within the present Territory of Arizona. I made the examination required and reported the result thereof to the company.

Among the records of the grants there found were those of the rancho of Paso de los Algodones, situated at the junction of the Colorado and Gila rivers, containing five square leagues.

In this examination no very critical inspection was made of the records, the object of the examination being to ascertain what records of grants of lands in Arizona were then on file in the archives.

Subsequently to the making of the examination above referred to, I was employed by the claimants of the rancho of Paso de Algodones  
365 to make a translation of the "testimonio" or certified copy of the original expediente of the grant. To this translation I appended a certificate as to the correctness of the same, and also certifying to the genuine character of the signature of Jose Ma. Mendoza, which appears officially in the title papers. I also from memory stated that the grant of Paso de los Algodones was registered in the book of Toma de Razon, which book forms a part of the Sonora archives, and contains a registry

of grants made from the year 1831 to 1849 and consequently embracing the year 1838, the year in which the grant of El Paso de los Algodones purports to have been made.

In the examination made by me of the Sonora archives during the last year as special agent of the Government I found that in the certificate I had given some years since from memory in relation to the original title papers of the rancho of Paso de los Algodones, I had made a mistake as to the grant being registered in the book of Toma de Razon; a note of the registry if made on the original expediente in the archives, but the grant is not registered in the book of Toma de Razon referred to. This defect I noticed in my examination as special agent of the Government and so reported; but inasmuch as the bona fide character of the title papers are certified to by Jose Ma. Mendoza, for many years treasurer-general of the State of Sonora, and Jose de Aguilar, ex-governor and the leading lawyer of Sonora, I thought that the omission to register the grant in the book of Toma de Razon might have been the result of accident or neglect.

366 Subsequently, in casual conversations with persons whose antecedents would naturally give them opportunity of knowing something about the history of this grant, remarks were made calculated to awaken suspicions as to the bona fide character thereof.

In view of these facts, the surveyor-general, by letter of instructions dated January 14, 1880, directed me to make another examination of the archives in Sonora, in order if possible to learn something further of El Paso de los Algodones.

In this examination of the archives, I found on the conclusion of the measurement of the Paso de los Algodones, the officers engaged therein went to a point on the coast of the Gulf of California, called Punto del Sargento, situated opposite the island of Tiburen, for the purpose of surveying a rancho of that name, located at that point.

In the course of my examination I found:

1st. That the ranchos of Paso de los Algodones and La Punta del Sargento were petitioned for by the same person (Fernando Rodrigues) and on the same day the petition asking for the five square league at the Paso de los Algodones, and ten square leagues at the Punta del Sargento.

2d. That the language of the two petitions are very similar.

3rd. That the several orders in the proceedings of the two cases were made on the same days, and are in the same handwriting, and these handwritings differ from all the handwritings in the proceedings of the various grants made during the year 1838.

4th. That neither of the grants of Paso de los Algodones nor  
367 Punta del Sargento are registered in the book of Toma de Razon for 1838, although other grants made during that year are found registered in their proper places in said book.

5th. That the grants of El Paso de los Algodones and Punta del Sargento purport to have been made by Jose Justo Milla, as "contador" or auditor of the treasury, acting "por ministerio de la ley" (ex officio), Jose Ma. Mendoza being at that time treasurer-general, and that the same names appear in both cases as assisting witnesses in the proceedings.

6th. That the signatures of Jose Justo Milla, where they occur in the proceedings of both cases, appear to be written with the same ink, and bear a striking resemblance to each other.

7th. That the signatures of Jose Justo Milla as found in the proceedings of these two grants differ in appearance from his signatures as found in the archives on documents of near the same date as these grants; that this difference is more manifest in the rubrica or flourish than in the writing of the name; the rubrics, as found in these grants, showing much hesitation, while the rubrics to other signatures are free and graceful, appearing to have been made without thought or hesitation.

8th. That one of the signatures of Milla as found in the original proceedings of the grant of Paso de los Algodones is written thus "Jose Jose Milla," instead of "Jose Justo Milla."

9th. That the signatures of Santos Vigarria and Jesus Trasquillo, where names appear as assisting witnesses in the proceedings of these two grants, are different in appearance from the writing of the same names as found in the archives of near the same date, and this difference is particularly manifest in the formation of the rubricas.

Question (by SURVEYOR-GENERAL). From all the examinations you have made of the original title papers in this case and of the Government archives of the State of Sonora in relation thereto what is your opinion as to the character of the grant of El Paso de los Algodones?

Ans. I am of the opinion that the signatures of Jose Justo Milla where they occur in said original title papers were not made by his hand, and that therefore the grant is not genuine.

R. C. HOPKINS.

Subscribed and sworn to before me this 30th day of July, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,  
U. S. Surveyor-General.

Which said exhibit bears the following endorsements: In the matter of the "Paso de los Algodones. Ex. D. Gov. Testimony of R. C. Hopkins. No. 9 in docket, page 8 in journal, vol. 2. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Filed July 30, 1880. John Wasson, sur. gen. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

369 WILL. M. TIPTON, being duly sworn, testified on behalf of the defendant in English as follows:

Direct examination by Mr. REYNOLDS, U. S. attorney:

Q. What is your official capacity, if any?

A. Special agent of the court of private land claims, detailed to duty in the office of the United States attorney for that court.

Q. State if you are familiar with the Spanish language.

A. I am.

Q. Read, write it, and translate it into English?

A. Yes, sir.

Q. State what experience you have had in the examination of Spanish and Mexican documents in the archives of the surveyor-general of New Mexico.



A. I was connected with the office of the United States surveyor-general of this Territory for about sixteen (16) years, eight of which I was translator and custodian of the archives, in which position I had occasion to translate many documents, to examine a great many more, and outside of my official position I frequently made translations and copies of old Spanish documents for different attorneys in the Territory.

Q. I will get you to state fully if you have made any examination or investigation in the archives at Hermosillo, State of Sonora, Republic of Mexico, with relation to the Algodones land claim; and, if so, what examination, what you found, how you happened to make the examination, and all about it.

A. I made an examination of the original expediente in the matter of the El Paso de los Algodones grant, and made a comparison of the different handwritings on that expediente with the expediente in the matter of the Punta del Sargento grant, and also examined a great many other documents in the archives, all of which examination was under and by the direction of the United States attorney for this court.

Q. Give the result of your examination, the condition of the archives, and the condition of these papers.

A. I have some notes here [refer'ing to notebook]. I made a particular comparison of the expedientes in the matter of the Algodones and the Sargento grants, the result of which is practically what I have here in my memoranda [refers]. The expediente in both these cases was upon twenty written leaves, and in addition to the written leaves there were two leaves forming a cover, with the exception that in the Algodones case there were two other leaves, which had been evidently recently attached to the expediente; one a power of attorney by Mr. E. M. Sanford to Bartholomew Rochin, who is in charge of the archives of the office of treasurer-general in Hermosillo; and also a petition by Mr. Rochin, asking permission to have a copy made of the grant. I simply mention that fact to show that it is the only difference in the two expedientes as far as the number of pages is concerned. The paper in both of the expedientes, as far as the written leaves are concerned, are are same kind, and is heavier paper and has a rougher surface than the leaves forming the cover of the expedientes.

The petition of Fernando Rodriguez in both expedientes is in the same handwriting, and is not in the handwriting of Rodriguez himself. Both petitions are dated upon the same day; I believe at Hermosillo. The next instrument following the petition in each case is an order appointed a surveyor to make the survey of the tracts. The date in both of the instruments and the handwriting are the same. Following this in both expedientes, is what in the Spanish is called the act of obedience, in which the surveyor appoints subordinates to assist in making the survey. The officers in both cases were the same, and the date of the instrument the same. According to the expediente in the Algodones case the survey was made on the 3rd of February, 1838, and by that of the Junta del Sargento the survey was made on the 20th of the same month. On February 4th, 1838, the officers made an entry in the expediente of the Algodones grant of their intention of going to the PJunta del Sargento, and on the 21st of February they made an entry in the expediente of the Sargento of their intention of going to Arispe to complete the expediente. From that point

in the expedientes in both cases, up to the conclusion, the proceedings in each were practically the same, with the exception the difference of the name and area of the two tracts, and with the exception of one place, in the Algodones grant, in the entry of the proceeding of the first  
372 almoneda, the witnesses were different from those in the matter of the Sargento. I believe that is all on that point.

Q. Do you remember whether the officials who alleged to put Rodriguez in possession of these two grants were the same?

A. Yes, sir. The man who made the survey and his attendants were the same; and from there on, with the exceptions I have made, each proceeding in the Algodones was practically the same as the corresponding one in the Sargento case.

Q. Did you compare these documents with other documents on file in that office?

A. I examined a great many other documents; some were expedientes in the matter of different land grants, also books of account, and also letters upon subjects to which I paid no attention, because I was simply looking at the handwriting.

Q. What was the result of your examination and comparison of the writing in these two grants with handwriting of other documents?

A. I didn't see any handwriting in any of the documents which I examined there which I felt certain was the same as any of the handwritings of these two expedientes.

Q. To what extent did you examine the matrixes for that same year that were on file?

A. I can not say. I didn't particularly examine the matrixes for that year. There were a great many documents on the table where we were working; some were of that year; some prior to the date of this  
373 grant, and some subsequent to this date; I can not say how many I examined of any particular year; I didn't make any note of that.

Q. Did you examine the Toma de Razon?

A. Yes, sir.

Q. What was the result of your examination with reference to the record of it?

A. I found that upon the fifty-fourth leaf of the book Toma de Razon, on which the entry of these two grants would be expected to be found, I found the entry of the grant San Pedro del Templo, the title to which was issued on the 10th of April, 1838, and following, the Lajitas, issued on the 29th of the same month, that there was no entry of the issuing of the title in the matter of the Algodones grant nor the Sargento grant.

Q. Did you examine the writing in the entries of the Toma de Razon, with reference to that of the Sargento and Algodones grant?

A. No, sir.

Q. Did you examine the endo'sement on the Algodones and Sargento of the fact that they had been recorded? And do you know whether that was in the same handwriting of the Toma de Razon?

A. What handwriting?

Q. For the 10th of April and 29th of April?

A. Before I answer that I must know what you mean; do you mean the note on the expediente that the title had been recorded, or the note in the book, that the title had been recorded?

Q. In the book?

374 A. I didn't make any particular examination with a view to fixing that in my mind, but my recollection is that what Judge Sanford now refers to as the "Toma de Razon" is in a different handwriting than that of the entry of these two grants which I have just spoken of.

Q. Did you notice whether or not the endorsement on the Algodones which Judge Sanford called the "Toma de Razon," is the same handwriting as any of the body of the instrument?

A. I think it is in the same handwriting as the thirty offers of sale, if I remember rightly.

Q. Is the handwriting on the Toma de Razon for the 10th of April, 1838, and the 29th of April, 1838, are in the same handwriting as any of the handwritings of the Sargento or Algodones expedientes?

A. No, sir; to the best of my knowledge they are not.

Q. Do you know how much land was grant' in the Sargento case?

Mr. STEVENSON. I object to that as immaterial.

Q. (Mr. REYNOLDS.) How much land is designated therein as having been granted?

Mr. STEVENSON. Objected to as incompetent and immaterial.

By the COURT. Admitted, subject to the objection.

A. There were ten sitios granted in the Sargento case.

Q. I will get you to state if, in your examination, you made any investigation of the instruments, designated in Mr. Robinson's deposition, of grants made, and not having been recorded, in the Toma de Razon,

375 with a view to determining whether or not they were recorded in the Toma de Razon; if so, what was the result of your examination?

A. I think Mr. Robinson stated—I don't recollect his exact words—that he knew of a number of grants, the date of which he mentioned, which were not in the Toma de Razon, where they should have been entered. Of these grants which he mentioned I found in the Toma de Razon all but one, and the latter I didn't succeed in finding, because I didn't know its date and consequently didn't know where to look for it without spending a great deal of time. The grants which Mr. Robinson said were not in the Toma de Razon, and which are there, are the following: The Saguaral, issued on the 31st of January, 1838, the entry found on the first page of leaf 52 of the book; Huerta de Jalapa, issued on the 10th of February, 1838, on the first and second pages of leaf 52; La Cienaguita, issued on May 21st, 1838, found on the second page of leaf 54; Santa Gertrudes, issued on the 30th of May, 1838, and entered on the second page of leaf 54; La Pasion, issued May 30, 1838, and found on the first page of leaf 55; Las Centraditas, issued June 30, 1838, and found on the second page of leaf 56; San Rafael del Carrizal, issued July 30, 1838, found on the second page of leaf 56.

Recess taken until 2 o'clock.

At 2 o'clock case continued.

Mr. TIPTON—continued.

On direct examination by Mr. REYNOLDS, U. S. attorney:

Q. In your examination of the archives, as well as examination of the book called "Toma de Razon," did you examine it for the  
376 year 1838, with reference to the Sargento grant?

A. Yes, sir.

Q. Did you make a comparison between the Sargento and Algodones grant?

A. Yes, sir.

Q. What is their condition as to similarity?

A. I think I said they were practically the same, only those differences which we would naturally expect to find in grants for different tracts with different areas.

Q. Do you remember the recitals, the general recitals, in the petition of these two grants?

A. In a general way.

Q. I will get you to state what, if any, similarity existed between the recitals in the petitions.

Mr. STEVENSON. Objected to as incompetent.

By the COURT. Admitted, subject to objection.

A. They were both petitions for certain tracts of land, describing the location of the land in each instance; the only very singular similarity was the fact that they both recited that the possession would be taken of the land, and the land would be cultivated as soon as the notorious condition of the country would permit.

Q. Did you examine the petition in any other grants down there and matrixes—

A. Not critically.

377 Q. — with a view to ascertaining whether they were in the same handwriting as the Sargento and Algodones, and as to their contents?

A. I don't know that I examined them critically.

Q. State what, if any, inquiry you made with reference to the account book of the contador for that year, or the auditor.

Mr. STEVENSON. I object to it as incompetent.

By the COURT. Admitted, subject to objection.

A. I inquired for a book in which the entry of the payment of the purchase money for these two grants could be found; the keeper of the archives couldn't find it, and that's the reason I did not get to see it.

Q. What statement did he make to you, if any, in reference to it?

Mr. STEVENSON. Objected to as incompetent.

By the COURT. Admitted, subject to objection.

A. He said that he could not find it.

Q. What was the date of the Sargento grant?

A. The date of the issuing of the title was the 12th of April, 1838.

Q. What was the date of the petition?

A. I don't recollect; I stated this morning by reference to my memoranda.

Cross-examination by Mr. STEVENSON for petitioner:

378 Q. I wish you would be good enough to explain fully to the court the way this book of Toma de Razon is made up, what it stands for—I do not mean its contents, but how made up.

A. The book of Toma de Razon, in which the entries were made of the issuing of land titles from the 24th of October, 1831, to the 6th of December, 1849, is a manuscript book, the leaves of which have been sewed together, and which was bound in a white cover, something like sheep-

skin. The book consisted of 86 leaves, 85 of which were numbered on the upper right-hand corner, the first page of each leaf; the number on the last leaf, the 86th, was torn off after it was numbered; 82 of these 86 leaves were written on both sides; 68 of them were on paper of the 4th stamp for the years 1831 and 1832; 6 of the leaves were upon paper of the 5th stamp for the years 1844 and 1845; 4 leaves were not upon what is commonly called stamped paper, but upon paper bearing the seal of the treasury of Sonora; and 8 of the leaves were upon common paper without any stamp and without any seal of any kind.

Q. When you speak of leav's—did not this book originally consist of loose sheets of paper, which were at some time sewed together?

A. I' was evidently sewed together at one time; yes.

Q. Did you notice whether each of these pages was signed by any official, or by the rubric of any official—at the bottom of the leaf was there not a rubric of any official?

A. I don't recollect having noticed that.

379 Q. Do you not know as a matter of fact that there was a rubric on each of those pages of some officer?

A. I didn't pay any attention; there might have been such a thing.

Q. Explain what is meant by borrador.

A. I understand it to be a rough draft of an instrument, and unsigned instrument.

Q. Do you mean these loose sheets on which there was writing?

A. If they were not signed I should call them borradors.

Witness excused.

H. O. FLIPPER called, and, being first duly sworn, testified on behalf of the defendant, in English, as follows:

Direct examination by Mr. REYNOLDS, U. S. attorney:

Q. What is your residence and occupation?

A. Nogales, Arizona; civil engineer.

Q. How long have you been engaged in that business?

A. I have been surveying in this part of the country since 1882.

Q. In what connection?

A. In connection with land titles. I have examined four or five thousand Spanish and Mexican titles, and surveyed as many grants.

Q. You speak and translate the Spanish language.

A. Yes, sir.

380 Q. Were you ever in the employ of the Mexican Government?

A. Never.

Q. I will ask you to state whether or not you have ever had occasion to survey grants made or purposed to have been made by the State of Sonora?

A. I have; quite a number.

Q. State what, if any, examination you have made of such titles?

A. I have made examinations of grants, and reported to the department of public works—

Mr. STEVENSON. I object to such examination as incompetent.

By the COURT. Admitted, subject to objection.

Q. I will get you to state what the condition of the titles examined by you were in reference to their completeness?

Mr. STEVENSON. Object to the question as incompetent, for the reason that the witness has not shown that he is qualified to testify relative to the completeness or otherwise of said titles.

By the COURT. Admitted, subject to objection.

A. The titles that I have seen, issued by the States of Sonora and State of Chihuahua, seem to be complete so far as they go, but they lack the approval of the General Government.

Mr. STEVENSON. Object to the answer, and move the court to strike same out.

By the COURT. Passed, subject to the objection.

381 A. I know of one case where the title has been declared null and void when the land was given to an American company—the Gonzales tract in Sonora.

Mr. STEVENSON. Objected to as incompetent.

Q. What, if anything, Mr. Flipper, in your examination, and the titles you have come in contact with in Mexico, what has been their condition relative to the action thereon by the State or National Government?

A. I don't think I understand what you are getting at.

Q. You are a surveyor, and have been required to report to the Federal Government on all titles issued by the States?

A. Yes, sir.

Q. What, if any, action was taken by the National Government upon these grants, based upon the reports made by the surveyors?

Mr. STEVENSON. Objected to; witness is now attempting to testify as to the action of the General Government, which testimony is incompetent.

By the COURT. Admitted, subject to objection.

A. I know cases in which titles to lands which had been issued by the States have been declared null and void.

Q. I will get you to state what, if any, action that you know of has been taken by the parties claiming grants under title from the States so far as the National Government is concerned; what action has the National Government required to be taken?

Mr. STEVENSON. Objected to.

382 A. I know of holders of these State titles that have applied to the General Government for a confirmation of such titles.

Q. Do you know why this was done?

A. Because it was held, under the order of November, '53, they had been declared null and void by the General Government—Santa Anna's decree.

Q. What, if anything, do you know about the requirement of the Government of the holders of State grants registering in regard to procuring titles?

A. I know that several holders of State titles have had them confirmed by the General Government, and they were given new titles as repurchases.

Q. How many do you know of that kind?

A. I know of three, and I know of the parties: Nogr— de El—, ex-Governor Luis Terrazas, and Don Pedro Zuloaga. I know of two other grants in Sonora in the same condition. In one case, the Altar—, they declared that the title issued by the State of Sonora was null and void.



Q. I will get you to state, as one of the surveyors having occasion to investigate these land titles, the right of the National Government over the land in the State?

A. The public lands in Mexico have belonged to the Federal Government since Cortez landed in Vera Cruz.

Q. Public lands of the nation; what does that have reference to?

A. The public lands in all the States of Mexico.

383 Cross-examination by Mr. STEVENSON, for petitioner:

Q. How long have you been in this business?

A. I have been surveying ten years in Mexico.

Q. You have been surveying in Mexico for ten years; by whom have you been employed?

A. Principally American companies.

Q. What business was you engaged in prior to that time?

A. I was in the Army.

Q. What experience did you have with Mexican grant titles in the United States Army?

A. While in the Army, none whatever.

Q. Then, all the experience you have had is the experience derived while a surveyor?

A. My business required me to search land titles, and I took a course of law at the Military Academy—the United States Military Academy at West Point, New York.

Q. Are you employed by anyone who is interested in establishing grants issued by the State of Sonora are not genuine?

A. I am not.

Q. Are you interested in the Nogales grant?

A. I have a piece of land there; I am one of the settlers.

Q. Are you not interested in defeating that grant before this court?

A. The only thing I have done was to translate documents.

384 when requested.

Q. For whom?

A. For the committee.

Q. In that case the United States Government filed the petition?

A. I believe so.

Q. You say that these owners of grants issued by the State of Sonora applied to the Federal Government for their confirmation of those titles that were made void by the Santa Anna decree?

A. No, sir; I did not mean to say that, and I misunderstood Mr. Reynolds, if that was the question; because I have not said that those had been confirmed that were void by this decree; because they have had any title, and the declaration in the decree is that they are already null under existing laws, and because they were not issued by the proper authorities.

Q. You are employed, you say, by American companies who have acquired their tracts in the State of Sonora?

A. Yes, sir.

Q. You are connected with an irrigating enterprise down there?

A. The company had a concession for these lands, and I hold a general power of attorney from them to do work in Mexico, but am not connected

with the survey of the canal; the work on the American side I have nothing to do with whatever.

Q. Are you connected with companies and employed by parties interested in building a ditch that would, in order to irrigate their lands, have to go over portions of the land in controversy?

385 A. As I understand it, no, sir; can irrigate the land that way, but, as I have said before, I have nothing to do with the line work on this side of the line; my work is all in Mexico.

Q. The land on the Mexican side, is it of any value without a ditch on the same?

A. On this land water has been used and obtained over this land on the American side, and it can be obtained from the American side just as well.

Q. Were you not trying to obtain it on the Mexican side?

A. By the way the river runs it is more convenient to do it on the American side.

Q. Did you not run a line for that ditch?

A. I have never run one; no, sir.

Q. You are the representative of that company in the State of Sonora?

A. Yes, sir.

Q. You have charge of this company's—

A. I don't cross over into this country.

Q. It is the same company on the Mexican side as on the American side, that you are connected with?

A. Yes, sir.

Witness excused.

EUSEBIO CHACON, official translator, court of private land claims, testified as follows:

By Mr. REYNOLDS, U. S. attorney:

386 Q. I will get you to state what those books are you hold in your hand?

A. These books, from what I am able to get from the title of them, are Mexican legislation and compilations of all the laws that have ever been passed by the authority of Mexico.

Q. Do they purport to be issued by authority?

A. Yes, sir.

Q. Have you gone over those books, commencing with 1814 and down to 1839?

A. I have gone over a part of the laws that were passed the year 1814, and then I have gone over the laws that were passed from 1835 to 1838 very carefully—the principal acts and proceedings, and circulars, decrees, and regulations bearing upon the disposition of the public property.

Q. I wish you would take volume one and read the title.

A. "Mexican legislation, or complete collection of the legislative dispositions issued since the independence of the Republic. Compiled by Manuel Dublan and Jose Maria Lozano. Official edition."

Mr. REYNOLDS. I will offer certain portions of these books, the first of which will be in book one, article one, 1814, that is the date; on page 433 is the constitutional decree for the freedom of Mexico, signed at Arispe on the 22nd of October, 1814—

Q. Is that the beginning of the declaration of independence?

A. I would call it that.

Q. It is the basis upon which the Mexican nation was to form its declaration against Spanish monarchy?

387 A. It is in the preamble; it states it is the basis upon which they will form their independence—article first, chapter first.

Witness excused.

And defendant rests its case in chief.

The plaintiff reopened his case.

Mr. STEVENSON. I offer in evidence the report of R. C. Hopkins, as special agent of the Government of the United States, relative to the grant in controversy, made to the Commissioner of the General Land Office at Washington, and recorded at pages 176, 201 to 251, one *one* of the record books in the office o' the surveyor-general of the Territory of Arizona, which record book is upon its title-page endorsed by the surveyor-general of Arizona, as follows: "Duplicate report of the special agent, R. C. Hopkins, esquire, under instructions of date March 4, 1879, beginning at page 172 to 285. After the notes of explanation it is signed "John Wasson, United States surveyor-general for Arizona."

We ask to have the stenographer copy on the record such portions of the book as are marked.

388 Attorneys withdrew the last request, and stated that they would have copied the portions of said report so marked and introduced and file the same as an exhibit. (Petitioner's Exhibit X.)

#### EXHIBIT X.

Which said exhibit is in the words and figures following, to wit:

Report off R. C. Hopkins of an examination of the archives of the State of Sonora, Mexico, for the purpose of obtaining data in relation to grants of land made by the Government of Spain and Mexico within the territory ceded to the United States by the Gadsden treaty of 1853; which said examination was made under appointment by the Hon. Secretary of the Interior, dated February 26th, 1879, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,  
*Washington, February 26, 1879.*

The COMMISSIONER GENERAL LAND OFFICE:

SIR: In compliance with your recommendation of the 24th instant Mr. R. C. Hopkins, of California, is hereby appointed to examine the Mexican archives relating to the territory ceded by the Gadsden treaty, for the purpose of detecting and preventing the consummation of fraudulent titles thereto. Mr. Hopkins will receive a salary of eighteen hundred (\$1,800) dollars per annum, to be paid from the appropriation for incidental  
389 expenses of the local land offices, and in addition his actual and necessary expenses, which will be paid from the appropriation for contingent expenses of the General Land Office.

Very respectfully,

C. SCHURZ,  
*Secretary.*

The foregoing appointment was accompanied by special instructions from the Hon. Commissioner of the General Land Office, of which the following is a copy :

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., March 4th, 1879.

R. C. HOPKINS, Esq.,  
San Francisco :

SIR: In compliance with my request and recommendation the Hon. Secretary of the Interior has appointed you to examine the Mexican archives relating to the territory ceded by the Gadsden treaty for the purpose of detecting and preventing the consummation of fraudulent titles; that a copy of the Hon. Secretary's letter is herewith enclosed duly certified.

In furtherance of the object of your appointment, your attention is called to the sixth article of the treaty between the United States and Mexico, concluded on the 30th day of Decemb'r, 1853, and proclaimed by the President of the United States on the 30th day of June, 1854, by which that part of the Territory of Arizona lying south of the Gila River, and commonly called the "Gadsden Purchase" was ceded to the United

States, which provides as follows :

390 "No grants of land within the territory ceded by the first article of this treaty, leaving date subsequent to the day, twenty-fifth of September, when the minist'r and sub-minister to this treaty on the part of the United States proposed to the Government of Mexico to 'terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected, or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

"The reasons inducing your appointment and the pu'poses sought to be attained by the discharge of the duty thereby imposed upon you, are set out in my application to the Hon. Secretary, soliciting the app'ntment as follows :

"The construction of railroads and the development of the resources of said territory with their effect upon the value of land, operate as strong incentives to unscrupulous persons to manufacture fraudulent titles and have them placed in the archives; to have the description of the boundaries in such grants as may be found in the archives changed so as to embrace a larger area than originally described, and to have grants ante-dated, so as to bring them within the terms of the treaty with a view of obtaining titles to the public lands."

As a measure of precaution, to enable the proper officers or tribunals of this Government, upon whom may devolve the adjudication of private land claims situated within said territory, dated and prevent the  
391 consummation of such frauds upon the Government, I recommend that a suitable person familiar with the language and Mexican land grants be design'ed to proceed to where the Mexican archives of ceded territory are kept and make a copy of such portions as relate to the land therein.

With these reasons and purposes declared, and having reference to the provisions of the treaty above set forth, you are designated to proceed at the

earliest day practicable to the city of Ures, the present capital of Sonora, which formerly embraced the ceded territory referred to, or wherever else in Mexico the archives relating to said territory are kept, or may be found, to make such examination thereof, and procure such transcripts and abstracts of the same, as may subserve the objects above indicated.

It is not possible for this office to prescribe the particular line or manner of proceedings which it may be proper and necessary to pursue. Your long experience in the custody and ease of the Mexican archives relating to Mexican and Spanish grants existing in California, and familiar with the various forms of title papers in use under the former governments of Mexico, will enable you to discriminate in the selection of documents to be copied so as to secure all the data that may be desirable. The proper execution of the mission is entrusted to your judgement and discretion.

I wish to direct your attention particularly to the scrutiny of dates, both of the documents found and of their recording, and filing in the archives; also of the description of premises therein, so as to detect as far as possible any changes that may be made with fraudulent intent, and that all precaution that your experience and sagacity may suggest to be taken to guard against the adoption as genuine title papers.

I suggest, in reference to transcript of documents, that they may be made in such form that translations of each, if necessary, can be appended to it, and the whole indexed for convenient reference, and that notes be made descriptive of any marked peculiarity that may appear in any of the documents copied.

You will receive as compensation for the service, as a specified in the letter of appointment, the salary of \$1,800 per annum, to be paid from the appropriation for incidental expenses of local land offices, and in addition your actual and necessary expenses, payable from the appropriation for contingent expenses of this office.

You will be furnished with a separate letter from this office with instructions as to the manner of rendering your accounts and receiving the payment of the same and your salary. You will also be furnished in a letter from the Hon. Secretary of State, accrediting you to the proper Mexican authorities.

Respectfully,  
(Signed)

J. A. WILLIAMSON,  
*Commissioner.*

To the Hon. COMMISSIONER OF THE GENERAL LAND OFFICE,  
*Washington, D. C.:*

393 SIR: In obedience to the foregoing appointment and instructions, I left San Francisco, California, on the 8th day of April, 1879, and went by the most direct route to Ures, the capital of the Mexican State of Sonora, and on reaching that place at once presented my credentials to the governor of the State, who made such orders as enabled me to have free access to the Government archives at all times during office hours.

I commenced my work by making a list of all expedientes or records of grants found in the archives from the earliest date (1661) to the date of the Gadsden treaty. This I deemed important as a guard against frauds

that might thereafter be attempted. This list I shall make an appendix to this report. From the list so made I have selected such grants as lie within the territory ceded by the Gadsden treaty, and of these I have made a careful examination, copying such portions of the record as will be necessary to determine the locations and boundaries of the tracts granted, and making such abstracts, note, and remarks as will clearly show the character of the grants, all of which will be duly set out in this report.

For the better understanding of the matters set forth in my report I think it will to preface the same with a brief outline of the laws of Spain and Mexico under which the public lands were granted and of the formalities observed in the making of said grants.

Mining and stock-raising being the principal pursuits of the Spanish colonists of Mexico these industries were encouraged and 394 protected by the Government by the passage of such laws from time to time as facilitated the stock-raising in the acquisition of lands sufficient for his use, and enabled the discoverer of a mine, by the simple process of denoucement, to acquire the exclusive right of working the same, the grantee of the land paying a small sum to the Government in consideration of the title given him, and the owner of the mine paying certain percentage of the proceeds thereof as a royalty for the exclusive right given him to work the mine he had discovered.

Under this system the applicant of land could not acquire a title for more than he required for his . . . He was compelled to satisfy the Government by reliable testimony that he needed the land for which he petitioned, and had sufficient means to stock and improve the same.

It being the policy of the Spanish Government to encourage by all means the settlement of her possessions in the New World, and the development of the natural resources thereof, the expenses attending the obtaining of titles to realings, or public lands, were made by law as light as possible. With this view was passed the royal decree of the fifteenth of October, 1754, in which it is set out:

That experience had shown that the law requiring the concession of the realing lands to be approved by the royal person of the King' as operated a great hardship upon applicants for vacant lands, since the 395 expenses incur'ed in obtaining such approvals were generally greater than the cost of the land, which much retarded the settlement of the country. It was therefore decreed that from the date of this royal resolution the viceroys and presidents of the real audiencias were authorized to appoint ministers subdelegados, whose duty it would be to take *take* the proceedings in relation to the sales and composition of vacant lands in the royal dominions of the New World, the viceroys and presidents to give punctual notice to the real secretario de estado y despacho universal de los yndeos of the ministers appointed as subdelegados in the respective districts.

This royal decree provided that the respective audiencias should grants of lands, first having submitted the same to the inspective fiscal (attorney-general), without any other expenses than the taxes affixed by law to these concessions.

Under this decree the preliminary proceedings of survey, valuation, publication and sale having been taken on the petition of the applicant



for land by the minister subdelegados of the district in which the land was situated, the expediente showing such proceedings was transmitted to the real audiencia for approval, and if approved the grant and title was issued and registered on a book of registry for that purpose.

The provinces of Sonora and Sinaloa belonged to the real audiencia of Guadalajara, and hence the grants or sales of land by the Government under this decree above referred to were registered in th' real audiencia 396 of that place up to the 4th of December, 1786, when the "real ordenanzas intendentess" were issued by the Government.

Under these "real ordenanzas intendentess" were made jueces privateros in all matters occurring in their respective provinces in relation to the sales, composition, and distribution of vacant lands, the intendentess and subdelegados to proceed in accordance with the royal institutions on the 15th of October, 1754, so far as the same was not changed by the ordenanzas.

Under the ordenanzas of the intendentess the proceedings preliminary to the grant of survey, valuation, publication, and sale were taken in the same manner as under the law of the 4th of December, 1754; but the proceedings, instead of being referred for approval to real audiencia, were submitted to the intendente (governor), who referred the same for examination to the promotor fiscal (government attorney), who made a report thereon; whereupon it was referred by the intendente to the "provincia junta de hacienda," and when approved was transmitted through the of the comandante-general to the city of Mexico for final approval by the supreme authorities of the Government; and, if found to be correct, was approved, registered in a book kept for that purpose, and the expediente returned to the province where it belonged, and where it still exists, if not abstracted or destroyed. If the proceedings as shown by the expediente were found to be irregular it was sent back to be corrected, or for explanation.

Under these ordenanzas, grants of realingo, or public lands, continued to be made, until the dominion of Mexico was lost to the 397 Crown of Spain in the revolution of 1821.

On the 4th of August, 1824, the sovereign general constitutional Congress of the United States of Mexico passed decree No. 78, in which is specified the sources of the federal revenue, and the 11th article of this recites:

"That the rents that are not included in the preceeding article of this decree belong to the states.

As a compensation for the concession of the General Government, a sum of between three and four millions of dollars was required to be paid yearly by the states for the support of the General Government. This sum was apportioned to the different states according to their population and wealth, the sum apportioned to the State of Sonora being some \$53,000.

Under this law grants of land have been made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment.

After the independence of Mexico the old intendente, embracing the provinces of Sonora and Sinaloa, was called under the new Government El Estado del Occidente, Sonora and Sinaloa continuing united *until* under that name until the year 1830, when they were divided by the boundaries, I think, as they now exist.

Between the time when grants ceased to be made within the intendencia of Sonora and Sinaloa, by authority of the Spanish Government, and the time when they were made by the authorities of the El Estado del  
398 Occidente, under the law of 1824 of the general Congress, and the provisional regulations of the congress of the State, the granting power was exercised by an officer entitled comisario general provisional de hacienda credito publico y guerra, whose headquarters, as shown by the records of the times, were generally at Fuerte, a town in Sinaloa, near the northern boundaries of the states.

About the year 1825 notes of the expedientes in the archives show that this officer issued a number of grants on proceedings which, under the Spanish Government, had not gone further than the approval of the provisional junta de hacienda, having been at that point suspended in 1821 by the revolution

In these cases no barrad or copy of grant is found in the expediente; but a note if found of the registry of the grant in Cuaderno No. 2 in the office of the comisario-general.

On the 20th of May, 1825, the constituent congress of free, independent and sovereign state of the west (Estado del Occidente) passed provisions, law No. 30, regulating the system of granting public lands. Under these provisional regulations the prices at which the public lands were to be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues unless the grantee could satisfy the Government that he required more for the use of his stock.

On the 12th of July, 1834, the congress of Sonora passed the "Ley Organica de Hacienda No. 26."

This law made no material change of the law of 1825 except in  
399 fixing value of public lands.

Grants made under these laws were conditional. They were to be occupied, and if abandoned beyond a certain time they were considered as vacant and denounc'able; unless the abandonment was caused by the hostility of the neighboring savages; and the Ley Organica of 1824 provided that if the final title or grant had not been obtained by a petitioner for land, although all the preliminary proceedings had been regularly taken, the petitioner should present himself before the treasurer-general within a certain time and show good cause why he had not obtained his title; after cause, the tract claimed by him should be considered vacant and denounc'able.

In granting or selling the public lands the Government of the State of Sonora continued the system that been established under the Spanish Government; the same formalities were observed; the lands were surveyed, valued, published for thirty days, and at the end of which time they were sold at public auction to the highest bidder; the treasurer-general of the State occupying the same position under the State government that the intendente did under the Spanish Government, with this difference, however: The grant given by the treasurer-general required no approval of the supreme Government.

On the 25th of November, 1853, Antonio de Lopez de Santa Ana, President of Mexico, declaring null and void all sales, cessions or any  
400 other class of alienations that may have been made of the public lands by virtue of any orders, decrees of the legislature, govern-

ment or authorities of the States and territories of the Republic without the sanction of the general powers in the form prescribed by law.

On the 7th of July, 1854, President Santa Ana issued another decree declaring that the titles of all alienations of public lands made in the territory of the Republic subsequent to the month of September, 1821, either by the general authorities or those of the extinguished States or departments, shall be submitted for revision to the Supreme Government, without which they shall be of no value.

On the 3rd of December the General Juan Alvarez, President ad inter'm of the Mexican Republic, issued a decree annulling in all the parts the decrees of the 25 of November, 1853, and of the 7th of July, 1854.

#### ARCHIVES OF LAND GRANTS,

As they at present exist in the capital of the State of Sonora, consist of twelve or fifteen hundred expedientes or records which are in the shape of old-fashioned school copy books; unfolded sheets stitched together containing from 20 to 100 pages each, dating back to the year 1661, and covering the territory now known as the Mexican States of Sonora and Sinaloa, and the southern border of the present Territory of Arizona; which Territory was under the Spanish Government first within the jurisdiction of the real audiencia of Guadalajara; consequently it formed the intendencia of the provinces of Sinaloa and Sonora; and under the Mexican

401 Government up to 1830, it was called the "Estado del Occidente." Under the Government the town of Arispe, situated in the northern part of Sonora, was the capital; and under the State government of Sonora, continued to be the capital until 1839, when it was removed to the town of Ures, where it remained until May, 1879, when by act of the legislature it was removed to Hermosillo.

The archives, as they at present exist, are found in a good state of preservation; much of the old writing is time faded, but it can all be read by any one familiar with the language and th' old-fashioned letter. Tradition, however, says that many of the original archives of the Government have been destroyed by the frequent revolutions which for many years have wasted that unhappy country, and these traditions would seem to be not without foundation, since the very building in which they were kept bears many marks of hostile encounters.

There are, however, no means of ascertaining what, if any, expedientes have been lost or destroyed, since they are not consecutively numbered, nor is there any corresponding book record in which an entry was kept of these exdientes of grants, except for the periods embraced between the 24th of October, 31 to the 1st of December, 1849, for which period there is found a book of registry of grants called:

Libro de Toma de Razon de los titulos de merced de terrenos expedidos por la Tedoreria General del Estado Libre y Yndependiente y Sobrano. de Sonora.

402 BOOK OF REGISTRY OF TITLES OF GRANTS ISSUED BY THE TREASURY DEPARTMENT OF THE FREE, INDEPENDENT, AND SOVEREIGN STATE OF SONORA.

The first entry if this book is made on the 4th of October, 1831; it contains 82 written pages which generally three entries on a page, the entry

being signed by the treasurer-general. The book is parchment bound; the first 68 leaves consist of stamped paper leaving a seal with legend "Estado Libre de Occidente," the margin of each leaf leaving the rubrica of Jose Ma. Mendoza, treasurer-general, containing entries to the 20th of October, 1845.

The succeeding leaves numbered from 69 to 92 enclusive, also containing entry signed by officer making grants.

This is the only book of record of grants now existing in the archives, and it is important since it covers the period during which most of the Arizona grants were made.

This is the only book of record.

The bona fide character of the book is unquestionable.

#### TESTIMONIOS OF ORIGINAL EXPEDIENTE.

The original proceedings in obtaining a grant from the Spanish or Mexican governments remained on file in the Government archives and was called the matrix (matrix). These proceedings commenced with the petition and continued through the necessary progressive stage until the time arrived for issuing the grant or patent, when from this matrix was produced what was called the testimonio which was delivered to the grantee as his title.

403 This "testimonio" was made out in the following manner:

A skeleton "borrador" or draught was made out under the direction of the "treasurer-general" or granting officer, commencing with "Whereas," and reciting the laws under which they were made; making notes directing the original proceeding to be copied in the proper places; and concluding the skeleton with a "borrador," or copy of the title or grant commencing: "Therefore, by virtue of the authority vested in him."

From this skeleton draught which remained on file with the original expediente, or matrix, the testimonio was made out by a clerk, and signed by the governor or treasurer-general, so that, in point of fact, this testimonio was the original title.

In case of the loss of this "testimonio" a new and legitimate offspring could always be produced from the original matrix, so long as the same continued to exist in the archives; and in case of the destruction of the matrix, I presume that the legitimacy of the offspring could not be attacked so long as the descent was unquestionable, but the destruction of both the parent and the offspring would necessarily end the generation.

From the foregoing history and descriptive sketch it will be easy to understand the following reports in relation to grants made by the Spanish and Mexican government of lands situated within the present Territory of Arizona, made from data found in the Government archives in the capital of the State of Sonora.

\* \* \* \* \*

404

#### RANCHO PASO DE ALGODONES.

Situated at the jurisdicción of Gila and Colorado rivers, sold on the 12th of April, 1838, to Fernando Rodriguez, for the sum of \$406.00, with the following boundaries taken from the original field notes:

En vista de no tener estos terrenos ningunos colindantes por ser desiertos, muy precedi desde a la medicion correspondiente en los terminos que

siguen : Constituidos que fueror en un punto en el lado sur del Gila, rio, enfrente de la confluencia de este con el Colorado, hize poner una gran piedra un ahujon o brujula ; bien ordenada y observando del el rumbo del dar oredte casi para ir a terminar de paso del Rio Colorado nombrado " Los Algodones " se fuerno midiendo y contando tres cientos cordeles, que son tres leguas poco mas o menos por la irregularidades de andar a caballo remataron dicha medida en la preutado punto del Paso de Algodones (paso del Rio Colorado) en donde mende poner una mojonera una molo de piedras. Desde aqui siguiendo el margen do sobre dicho Rio Colorado rumbo de noroestre Norte, y Nordeste, se lleba la medida hasta el punto donde comenzo es decir hasta la primera mojonera piedra que se puso en el frenta de la confluencia del Rio Gila con el Colorado por haber pedido asi el registrador.

Fernando Rodriguez quedando medidos cinco sitios poco mas o menos.

Remarks on original title papers of rancho of Paso de Algodones :

Expedient containing 38 pages *id* found in proper place in the archives the proceedings of survey, valuation, publication, and sale are all regular, the same b'ing on corresponding stamped paper. The expediente, manifestly a genuine document concludes with the following entry, signed by the treasurer-general.

En 2 de April de 1838, se espidio por esta tesorerio-general a favor del Senor Don Fernando Rodriguez el correspondiente titulo de merced de los cinco sitios de terreno de labrantes que comprende el puesto nombrado El Paso de Algodones en el Rio Colorado y El Gila en frente de su confluencia a que contrae el expediente.

(Signed)

MILLA, *Treasurer-General.*

(Note—See " Note " on page 146.)

\* \* \* \* \*

The foregoing abstracts were made by me from the original expedientes of grants, on file in the archives of the capital of the State of Sonora, during the months of May and June, 1879. The territory covered by some of the titles examined and abstracted are partly and some, probably, entirely within the limits of the State of Sonora ; it being in some cases impossible from the descriptions of locations to tell, without survey, on which side of the line this land called for in the grants is located.

The original records from which the foregoing abstracts were made are manifestly genuine in character, showing no signs of simulations of signatures, interpolation, or changes of dates ; or anything indicative of bad faith in the execution thereof.

In addition the examination made by me of the archives existing in the present capital of the State of Sonora, I made a journey to Arispe, the ancient capital of the Intendencia under the Spanish Government  
406 and of the State of Sonora until the removal of the capital from that place to the town of Ures, in the year 1837, in order to ascertain if any papers or records in relation to land grants in Arizona still existed

in that place, but found none; in the meantime procuring from the prefect of the district of Arizpe an official certificate of which the following is a translation:

OFFICE OF THE PREFECT OF THE DISTRICT OF ARIZPE.

There do not exist in this office any original papers or records in relation to land grants in the Territory of Arizona.

Arizpe, July 21st, 1839.

(Signed)

JOSE MA. MERALES,  
*Prefect.*

Having now accomplished all that is required to be done under my instructions from the Department at Washington of the 4th of March, 1879, as it set forth in the foregoing report and accompanying abstracts and the annexed list in relation to the examination of the archives of the State of Sonora, the same is respectfully submitted.

R. C. HOPKINS,  
*Special Agent.*

Which said Exhibit X bears the following endorsements: Algodones Land Co. vs. The United States. Exhibit X. Filed in my office this 17th day of December, 1893. James H. Reeder, clerk. By I. L. Chaves, deputy.

407 Mr. STEVENSON: I now offer letter from John Wasson, surveyor-general Arizona, dated August 19, 1880, to Charles Crocker, president of the Union Pacific Railroad, San Francisco, California, of which there is a letter-press copy of this letter in letter book number one, private land claims, letters, September 1st, 1879, to March 15, 1881, being one of the letter books of the office of the surveyor-general of Arizona. (Petitioner's Exhibit Y.)

EXHIBIT Y.

Which said exhibit is in the words and figures following, to wit:

AUGUST 19, 1880.

HON. CHARLES CROCKER,

*Cor. 4th & Townsend Sts., San Francisco, Cal.:*

MY DEAR SIR: Some six months ago I advised you of the worthless and true character of the alleged private land claim at Yuma, known by the name of "El Paso de los Algodones." On the 12th instant I concluded with I am confident will prove the funeral rites of that fraud, and enclosed you will find a copy of my report accompanying the papers and testimony in the case.

Mr. Hopkins expects to leave for the city two days hence.

Very respectfully,

JOHN WASSON,  
*U. S. Surveyor-General.*

408 Mr. STEVENSON. Also offer letter from John Wasson Wasson, surveyor-general, to H. B. Underhill, of the Pacific Railway Company, dated February 28, 1880, found on page 179 of the book above referred to. (Petitioner's Exhibit Z.)



Let the record show, it is admitted that the letter book and the record book containing the report of the special agent, Hopkins, is a record book and letter book of the surveyor-general on file in the office of the surveyor-general of Arizona. 22.

## EXHIBIT Z.

Which said exhibit is in the words and figures following, to wit :

FEBRUARY 28TH, 1880.

Judge W. B. UNDERHILL,  
*San Francisco, Cal. :*

D'R SIR: I am in receipt of your letter of the 24th instant and have to say in reply :

1. If there is such a tract of land as the Tres Alamos your railway lines will cross it in passing over San Pedro Valley at or near Ohnesorgen's station.

2. If there is a valid grant such as the Tres Alamos (under the proceedings of 1831 to 1833 hereafter referred to) then there is no Government land lying between the Boquillas and the said grant.

409 3. Township 17 S., R. 20 E., so far as the records of this office show, is undoubtedly public land belonging to the United States, except so far as individuals may have acquired rights or title under our own laws.

I remark on the foregoing replies as follows :

In 1831 an application was made to the authorities of Sonora by eight (8) persons for a grant of land to be called the Tres Alamos to embrace 58 square leagues. It was to cover the San Pedro Valley from the Boquillos on south to the Gila River on the north, and from the boundary of the Presidio of Tucson far enough east of the San Pedro to make up the 58 leagues.

At the instance of the applicants the Sta'e congress of Sonora passed a decree directing the treasurer-general to issue said grant, provided it were first shown by competent testimony that the applicants possessed the means to occupy the proposed grant and to maintain sufficient force to keep back the hostile Indians. The record shows that under this decree some testimony was taken, but before its completion the proceedings in the premises were suspended because of the hostility of the Indians. The last entry of the record was to the effect that the proceedings were suspended, but would be resumed upon request of the applicants for the grant. The proceedings were never resumed, nor is there any record to show that the applicants ever requested their resumption for any purpose whatever. This Tres Alamos grant was never completed, and the records of

410 Sonora show that the proceedings never at any time warranted the issuance of a grant, and also that no grant was issued upon them.

Take the record as the Sonora authorities made and left it in this case; the United States can never confirm or recognize as valid any grant based thereon, except by the grossest preversion of the Gadsden treaty and the boldest collusion of the United States officers with the claimants.

For your information I will further say in this connection, viz : I hear rumors that a claim or grant for eight square leagues will be presented

at some future time on the proceedings of 1831 to 1833 before referred to, but if done it can never be confirmed save by criminal negligence and brazen cooperation with the claimants on the part of the representatives of the United States.

The original Tres Alamos was designed to cover 50 sq. leagues and the rumored one but 8. Not this latter claim may be so located as to cover the land from the Boquilloas down the San Pedro, and therefore land at, above, and below Ohnersorgen's Station, and it can be as easily located wholly north of Ohnesorgen's and off any land your company is interested.

It is of the utmost importance that the contents of this be kept from the public. You will readily understand why. No cas' is yet presented and the information I give you is that collected by Government to protect the public from frauds. Your company can use the facts as effectively by keeping them from the public.

Very respectfully,

JOHN WASSON,  
*Sur. General.*

411 Mr. STEVENSON. I now offer copy of letter from H. B. Underhill, right-of-way agent of the Central Pacific Railroad Company, to John Wasson, surveyor-general, dated San Francisco, August 26, 1880.

H. B. Underhill, right-of-way and town-site agent.

CENTRAL PACIFIC RAILROAD,  
FOURTH AND TOWNSEND STREETS, ROOM 5,  
*San Francisco, Aug. 26th, 1880.*

JOHN WASSON, Esq.,  
*Sur. Gen'l, Arizona:*

DEAR SIR: Have this day received and read with interest your report on the Algodones grant. You deserve great credit for your careful investigation of this case, and will no doubt be fully sustained in your conclusions by the Land Department. Accept my thanks for the copy of your report. I will hand it to Mr. Crocker, who will be gratified to learn of the facts in the case and the conclusions reached.

Saw Mrs. Wasson a few days since and was struck with the evidence of improvement in her health. She seems no longer to be an invalid.

Very truly, yours,

H. B. UNDERHILL.

Plaintiff rests.

412 The defendant reopened its case.

Mr. REYNOLDS, U. S. attorney. May it please the court:

For the purpose of showing that the Mexican nation, or confederacy of the Mexican States, was not formed originally by a constitution compact between several separate independent States, nor by a grant of powers originally vested in the several provinces which afterwards constituted the States of the Union, but on the contrary that said nation originally constituted a central government and claimed and exercised central and

supreme authority over all the provinces which formed the Union of States, and which, by the constitutional provisions hereinafter cited, divided itself for political and municipal purposes into States and Territories, I offer the following articles of the constitution of October 22, 1814, which will be found in the Mexican Statutes at Large, volume 1, page 433 et. seq.

Article 1, by which the religion of the nation is established—which said article 1 is as follows:

"ARTICLE 1. The Roman Catholic and Apostolic religion shall be the one to be professed by the state."

Article 42, which names the provinces which shall comprise the nation, which said article is as follows:

"ARTICLE 42. Until a proper demarcation of this Mexico-America and of the provinces it comprises shall be made, the following, in their actual boundaries, shall be considered as comprising it, viz: Mexico, Puebla, Llaxicaca, Veracruz, Yucatan, Oaxaca, Tecpam, Michoacan, Queritaro, Guadalajara, Guanaquato, Fotosi, Zacatecas, Durango, Sonora, Coahuila, and the New Kingdom of Leon."

Article 43, which is as follows:

"ARTICLE 43. These provinces can not separate themselves one from another in their government; much less can they secede in whole or in part."

Article 242, which provides the manner of the execution and publication of the constitution or plan of government, and which is executed by the deputies of the different provinces, your attention is called particularly to that of licenciado Jose Maria Ponce de Leon, deputy for Sonora, which said article is as follows:

ARTICLE 242. This decree shall be executed in duplicate, the two originals being signed by all of the deputies present and by the secretaries; the one of which shall be turned over to the supreme Government for its publishing and execution, and the other is to remain in the archives of the secretary of Congress.

National palace of the supreme Mexican Congress at Atpanzingan, 22 of October, 1814. Fifth year of the Mexican independence.

Jose Maria Licenaga, president; deputy for Guanaquato.

Dr. Jose Sixto Berduzo, for Michoacan.

Jose Maria Morelos, " New Kingdom of Leon.

Jose Manuel de Herrera, esq., " Tecpam.

Dr. Jose Manuel Cos, " Zacatecas.

Jose Sotero de Castaneda, esq., " Durango.

Cornelio Ortiz de Zarate, " Flaxcala.

Manuel de Alderete y Soria, " Queritaro.

Antonio Jose Moctezuma, " Coahuila.

Jose Maria Ponce de Leon, esq., " Sonora.

Dr. Francisco de Argandar, " San Luis Potosi.

Secretary, Remingo de Yarza.

Secretary, Pedro Jose Bermeo.

Mr. REYNOLDS. I also offer portions of the treaty of Cordova of August 24, 1821, signed by the viceroy on the part of the Spanish Government and by Iturbide for the Mexican nation. (See Mexican Statutes at Large, vol. 1, page 548.)

414 The title and article 2, by which the Government was declared to be monarchical modified by the constitution—in other words, a limited monarchy; which said title and article are as follows:

“Treaty of Cordoba.—Treaty signed in the town of Cordoba on the 24 of Aug., 1821, between Señores Don Juan O'Donoju and Don Augustin de Iturbide. \* \* \*

“ARTICLE 2. The Government of the Empire shall be monarchical constitutional.”

Article 12, by which the temporary powers of the Government are vested in the provisional congress; which said article is as follows:

“ARTICLE 12. The provisional assembly once being assembled, shall govern provisionally under the existing laws in whatsoever is not repugnant to the plan of Iguala, and until the Cortes frame the constitution of the State.”

Mr. REYNOLDS. I next offer the Plan de Iguala of February 24th, 1821, published by decree of October 5th, 1821 (see Mexican Statutes at Large, vol. 1, page 547), which appears to be the plan or basis of the Government until the adoption of the constitution of 1824, in which the nation is designated as a kingdom and describes the Government as being a limited monarchy; which said Plan de Iguala is as follows:

*Plan of Iguala, or plan of Señor Don Augustin de Iturbide.*

First. The Apostolic Roman Catholic religion without the toleration of any other.

Second. The absolute independence of this Kingdom.

Third. A monarchical government tempered by a constitution suited to the condition of the country.

Fourth. Ferdinand VII and in their turn those of his dynasty, or of some other reigning house, shall be the emperors, that we may provide ourselves with a sovereign and thus avoid the sad excesses of the ambitious.

Fifth. There shall be an assembly until the Cortes assemble and carry this plan into effect.

Sixth. Said assembly shall possess gubernative powers, and shall be composed of the members whose names have already been proposed  
415 to the Viceroy.

Seventh. It shall govern by virtue of the oath taken in the name of the King until the said King comes to Mexico, and also takes the oath, and then all further orders from it shall cease.

Eighth. If Ferdinand VII shall not decide to come to Mexico, the assembly or the legency shall govern in the name of the nation until it is decided which sovereign is to be crowned.

Ninth. This Government shall be upheld by the army of the three guaranties.

Tenth. The Cortes shall determine whether the assembly is to be continued in existence or whether a regency is to be substituted until the Emperor arrives.

Eleventh. As soon as they (the Cortes) convene they shall proceed to frame the constitution of the Empire of Mexico.

Twelfth. All the inhabitants of the said Empire are citizens with the right to postulate for any office whatever, without any other qualifications than those of their merits and virtues.

Thirteenth. They shall be respected and protected in their persons and property.

Fourteenth. The clergy both regular and secular shall remain in the exercise of all their rights and the enjoyment of their properties.

Fifteenth. All the departments of the State and the public employees shall remain as they are at this date, and only those who are opposed to this plan shall be removed, and replaced by others who shall make themselves conspicuous for their loyalty, virtues, and merits.

Sixteenth. An army for protection will be formed, to be called the army of the three guaranties, whose soldiers one and all shall perish before proving untrue to any of these guaranties.

Seventeenth. This army shall rigidly yield obedience to the military ordinance, and its chiefs and officers shall remain in the rank they now hold, having the right of preference, nevertheless, to vacant offices or to offices to be created on account of their becoming important and necessary.

Eighteenth. The troops composing it will be counted as troops of the line, and so will the other troops who embrace this plan. Those who shall not so embrace it and the citizens who enroll themselves will form the national militia, and the manner and order of all this shall be designated by the Cortes.

Nineteenth. Official positions will be bestowed on the soldiers by virtue of the reports presented by their corresponding chief officers, and provisionally in the name of the nation.

Twentieth. Until the Cortes shall assemble the proceedings in criminal matters shall be had in accordance with the Spanish constitution.

Twenty-first. In the case of conspiracy against the independence the offenders shall be reduced to imprisonment without inflicting farther penalties, until the Cortes shall dictate what the penalty shall be for this the greatest of crimes, second only to blasphemy and heresy.

Twenty-second. Persons seeking to propagate discord shall be watched over and considered in the light of conspirators against the independence.

Twenty-third. Inasmuch as the Cortes which are to be organized hereafter have to be constitutional, the deputies to them must be elected upon that understanding. The assembly is to determine the rules and the time required for them to convene.

Americans, behold here the creation and establishment of a new empire. Behold here what the army of the three guaranties, through the person who has the honor of addressing you, has sworn to uphold. Behold here the end for which your aid is sought. It asks of you nothing else but that which you yourselves should ask for and desire, namely, union, brotherhood, order, peace at home, vigilance over and abhorance of any movements whatever of a turbulent nation. These soldiers seek nothing else but the happiness of every one. Unite yourselves to them to carry to an end an enterprise which, save for the insignificant role I have played in it, I shall under all circumstances esteem an heroic one. There being no enemies for us to encounter let us hope in the God of Hosts, who is also the God of Peace, that in all who compose this combined army of

Europeans and Americans, royalists and separatists, shall be only the safeguard, the spectators of the magnificent work which I have to-day outlined and which is to be perfected and retouched by the fathers of the country. Carry dismay into the nations of enlightened Europe. Let them see that this America of the north emancipates itself without spilling a drop of blood. In the ecstasy of delight say: Long live the holy religion we profess! Long live this America of the north, independent of all nations of the earth! Long live the union which has brought happiness to us!

Iguala, 24 of February, 1821.

AUGUSTIN DE ITURBIDE.

MR. REYNOLDS. I, in this connection, offer the decree of October 5th, 1821, *supra*. Said decree is as follows:

*"Number 245.—Decree of the 5th of October, 1821.*

"To habilitate and confirm the authorities, that they may legitimately exercise their functions.

"The sovereign provisional assembly of the Government of the Mexican Empire, bearing in mind that from the moment its independence from Spain was solemnly declared, all authority necessary for the administration of justice and other public functions must emanate from the  
417 Empire itself, it has seen fit to habilitate and confirm all the officials in the offices they now hold and in accordance with the 'plan of Iguala' and 'Treaties of the town of Cordoba' to legalize all acts done by them in their official capacity."

MR. REYNOLDS. I also offer portions of the decree of June 17, 1823. (See Mexican Statutes at Large, vol. 1, p. 651.)

Article 1, which defines the constituent Congress; which said article is as follows:

"ART. 1. The sovereign constituent Congress of Mexico is the assembly of the deputies representing the nation and elected by the citizens in the manner hereinafter to be prescribed."

Article 2, which fixes the basis of representation; which said article is as follows:

"ART. 2. The basis for national representation is population, composed of the natives and inhabitants in the Mexican territory."

Article 9, which names the provinces, including that of Sonora; which said article is as follows:

"The provinces are: Upper California, Lower California, Coahuilla, Durango, Guanajuato, Guadalajara, Leon (New Kingdom of) Mexico, New Mexico, Michoacan, Oaxaca, Puebla, Queretaro, San Luis Potosi, Santander, Sinaloa, Sonora, Tabasco, Texas, Flaxcala, Vera Cruz, Yucatan, and Zacatacas."

MR. REYNOLDS. I also offer portions of the constitutive act of January 31, 1824. (See Mexican Statutes at Large, vol. 1, p. 693).

Article 1, which declares what comprises the Mexican nation; which said article is as follows:

"ART. 1. The Mexican nation is composed of provinces lying within the vice royalty that formerly was styled of New Spain and of Cap'tain-General of Yucatan, and the general commanderies of the internal provinces of the east and west."



Article 2, which is a declaration of its independence as a nation ; which said article is as follows :

"ART. 2. The Mexican nation is forever free from and independent of Spain and of all other nations whatever ; and it is not, nor can it ever be made, the property of any person or family.

418 Article 3, which declares that the sovereignty resides absolutely in the nations ; which said article is as follows :

"ART. 3. Sovereignty resides primarily and essentially in the nation ; and hence to it alone belongs the right of adopting and establishing through its representatives the form of government and other fundamental laws that it may deem proper for its preservation and happiness, modifying or changing them to suit itself."

Article 6, which provides that the *integral* parts of the nation are free, sovereign States in all that belongs to their internal government and administration, and this is the first mention of the word State and territory except in the act of January 8, '24, which is practically a contemporaneous decree ; which said article is as follows :

"ART. 6. Its *integral* parts are free, sovereign, and independent States in whatsoever belongs to their internal administration and government, and as shall be further stated in this act, and in the general constitution."

Article 8, which provides for the increase and modification of the number of states by the constitution ; which said article is as follows :

"ART. 8. In the constitution hereafter to be made the number of States composed in the foregoing article may be increased and modified according as the welfare of the people may require it."

Article 24, which requires that the constitutions of the several States must be consistent with the constitutive act and the general constitution and can not be adopted until the general constitution is adopted ; which said article is as follows :

"ART. 24. The State constitution must not be repugnant to this act, or to the provisions to be contained in the general constitution. Hence the State constitution can not be sanctioned until the publication of the general constitution."

419 Mr. REYNOLDS. I also offer portions of the constitution of 1824. (See Mexican Statutes at Large, volume 1, page 719, which was adopted October 4th, 1824.)

Article 1st, which declares ; which said article is as follows :

"ART. 1. The Mexican nation is forever free and independent of the Spanish Government and of all other powers whatsoever."

Article 2nd, which describes the territory of the nation ; which said article is as follows :

"ART. 2. Its territory comprises what was formerly styled the viceroyalty of New Spain, the capitana general of Yucatan, the general commanderies forming the internal provinces of the east and west, and also Lower and Upper California, together with their dependent lands and the adjacent islands on both seas. A constitutional law to fix out the boundaries of the federation will be made as soon as the circumstances shall permit."

Article 49, which provides as follows ; which said article is as follows :

"The laws and decrees emanating from the general Congress shall have the following for their object :

"I. To uphold the national independence and to provide for the security and preservation of the nation in its relations with foreign powers.

"II. To maintain the federal union of the States as well as the peace and public order in the internal affairs of the federation.

"III. To preserve the independence of the States among themselves in what pertains to their internal government, in accordance with the constitutive act and with this constitution.

"IV. To maintain the relative equality of the rights and duties which the States have in the eyes of the law."

Article 161, which provides that it shall be the duty of the States, among other things, to organize their governments and interior administrations, but in so doing shall not conflict with this constitution or constitutive act. \* \* \*

Also to forward annually to each of the chambers 420 of the general Congress a complete and detailed statement of the receipts and disbursements of all the treasury departments of each in their respective distracts with a statement of the origin of each ; which said article is as follows :

"ART. 161. Every one of the States has the following obligations :

"I. To organize its internal government and administration in a manner that shall not be repugnant to this constitution or to the constitutive act.

"II. To promulgate, through the medium of their governors, all their respective laws, decrees, and constitutions.

"III. To abide by and make others abide by the constitution and general laws of the union, and the treaties entered into, or to be entered into in the future, between the supreme authority of the federation and the foreign powers.

IV. To protect their inhabitants in the enjoyment of their freedom to write, print, and publish their political ideas, without the requirement of a license, revision, or previous approval for such publication, taking care at the same time that the general laws on the matter be not transgressed.

"V. To deliver at once criminals from other States unto the officer who makes demand for them.

"VI. To deliver fugitives from other States to the person who justly demands them, or to compel the said fugitives to satisfy otherwise the claims of the party interested.

"VII. To contribute to the consolidation and extinction of debts recognized by the general Congress.

"VIII. To present annually to each one of the houses of the general Congress a minute and comprehensive report on the amounts that are received and paid out at the treasuries within their limits, together with a statement of the origin of the one and of the other, and touching the condition of the different branches of the agricultural, commercial, and manufacturing industries ; likewise as to the new branches of industry that might be started and encouraged, together with a statement of the means by which that object can be accomplished ; likewise as to their population and the measures to be employed for protecting and augmenting it.

"IX. To present to both houses of Congress, and during their adjournment to the council of the Government, and also to the supreme executive power, an official copy of their constitution, laws, and decrees."

Mr. REYNOLDS. Also article 171, which provides that the constitution shall never be amended in certain particulars therein specified, one of which is the form of government; which said article is as follows :

"ART. 171. The articles of this constitution and of the constitutive act that fix the liberty and independence of the Mexican nation, its religion, form of government, freedom of the press, and the distinction drawn between the supreme powers of the union and those of the States, shall never be amended.

"Done in Mexico the 4th day of October, 1824, fourth year of the Mexican independence, third of its liberty, and second of the union."

Mr. REYNOLDS. I offer page 361 of the Mexican Statutes at Large, volume 2; which said page is as follows :

"Volume 2, page 361. Number 961.

"July 7, 1831, circular of the secretary of finance. Provisional regulation for the general directory of the revenues.

"ART. 10. The general directory shall take a minutes account of the quantity, locality, price, condition, and actual management of all the national properties and estates, including those of temporalities and of the inquisition as well as of all other properties belonging to the public finances, as provided in the said law of the 4 of August, 1824. It shall *shall* endeavor to make them yield the highest possible incomes, conforming to the law of the 26 of January last and to all other existing laws bearing upon the matter. It shall aim likewise at the greatest regularity as well as at the highest yield of the incoming profits, together with the corresponding diminutions in the expenditures. And it shall do whatever else may be deemed profitable in sales, leases, or other manner of disposing of the properties spoken of."

Mr. REYNOLDS. I now offer portions of the regulations of July 20, 1831, governing the treasury department of the nation, made by authority of the law of May 21st, 1831, for the purpose of showing that the "Junta de Almonedas" is a federal body composed solely of federal officers, with authority to sell no lands except such as are national lands, and with no authority to sell lands owned by the State of Sonora :

422 Section 73, which provides that the commissary shall receive the proceeds of the revenues which are under the administration of of the General Government; which said section is as follows :

"ART. 73. The commissariats-generals, within their respective demarcations, shall collect all the net products of revenue under the care of the general directory, and they shall be the proper custodians of funds that stand unappropriated for any purpose. It is their duty likewise to collect all other revenues fr'm all sources else; for which purpose authority is given them to incur whatever expenses may be necessary; said collections they shall distribute into the several funds of the Union according to their uses. They shall also supervise the balancing of the cash books in the Government offices and general depots, whenever the balancing shall have to be done. They shall be the proper supervisors and guardians of the treasury depots; and it is their duty to watch that all employees in

the same do their duty faithfully and well. In the matter of bridges, canals, and common roads, they shal' exercise such authority as is given, or that shall be in future given to them by law. Finally it devolved upon them to do whatever else is entrusted to them by the Government, relative to the finances of the nation; likewise as to matters entrusted to them by the general directory relative to its collecting offices, and they shall perform all other duties that may be assigned to them by law."

Section 126, which provides for the organization of the boards of public sale "Junta de Almonedas;" which said section is as follows:

"ART. 126. All sales, purchases, and contracts done for the benefit of the public finance department, wh'ever their object may be, shall be entered into by the commissaries-general at auction sales meetings (Junta de Almoneda). But in order to have such meetings called it is necessary that they should have previously received the proper order therefor given either by the Supreme Government and directly communicated to them, or indirectly through the treasurer-general or from the directory of the revenues, whenever the order has reference to matters of its own supervision."

Section 127, which provides for the place and manner of holding meetings and who shall be present and have a vote.

Mr. REYNOLDS. At this point, I will call your attention, the 423 department has only jurisdiction to sell lands of the nation, and not lands of the States, and by section 73 the commissary-general is given authority to receive the revenue which are under the administration of the general department, and the act of July 20th, 1831, so far as it applies to sales of lands, is confined to the sale of those lands under the jurisdiction of the general department; which said section 127 is as follows:

"ART. 127. Said meetings shall be held in the apartments of of the commissariats to be suited to the purpose or at the public place more immediately adjoining said offices; and the commissary or subcommissary who presides at them shall be a regular member thereof, as well as the oldest auditor of the treasury or his deputy, and also the public procurator wherever such may be; each one of these officers shall take their seats in the order in which they are named."

Article 128, which provides that certain officers of departments shall be casual members when matters connected with their departments are to be considered; which said article is as follows:

"ART. 128. Besides these regular members, there shall also be special members, as the nature of the sale, purchase, or contract may be; for whenever in the federal district officers of said revenue for the general directory are the subject for consideration, then the auditor in charge of said office or revenue shall attend the meeting in the character of a special member; said offices or revenues belonging to any other department, then the chief clerk of the section of accounts of finances shall attend. In army matters, an officer appointed by the proper inspector shall attend, and in matters concerning shops and buildings under the contract of the artillery department, their chief officer shall attend. In matters of hospitals, one of the first adjutants of the medical board; and in matters of fortifications and officers of the board of engineers. Lastly, upon matters having reference to any other thing than these mentioned, the employee better acquainted with such matters, and who shall be appointed by the commis-

sary-general shall attend. He (the commissary-general) taking care to give notice to both the regular and special members of the day and hour  
 424 for the auction to take place, which will be ordinarily at ten o'clock in the morning. When the military officers or the auditor of the general directory and the chief clerk *clerk* of the section of accounts of finance shall be present in the character of special members, they shall take their seats after the commissary-general."

Article 130, which provides that a notary public shall attend if there be one in the place, which said article is as follows :

"ART. 130. If there happens to be a notary at the place, he shall be in attendance of said auction-sale meeting without fail, and with him, or if there should be no notary, then with two attending witnesses. All matters transacted at the meeting shall be certified to."

Article 131, which requires notice of sale and prescribes the manner in which it shall be given, which said article is as follows :

"ART. 131. But in order to hold such meetings it is necessary that the sales or purchases to be made must be announced to the public, at least eight days before, by means of placards to be posted at prominent and conspicuous places, having their contents published also in newspapers having the largest circulation, if there be any such papers in the place, the commissaries being careful that in said notices both the more essential circumstances and the necessary instructions pertaining to the matter be inserted."

Article 132, which prescribes the manner in which the sale shall be conducted, which said article is as follows :

"ART. 132. Once that the meeting shall be opened and the corresponding proclamations made by the public crier, bids legally made shall be admitted until the closing day of the sale, when it shall be declared in favor of the highest bidder by a majority of the meeting. This act, together with whatever else took place at the auction sale, will be placed on record in a book kept by the commissaries or subcommissaries for that purpose, all the members signing therein, together with the attending witnesses, or with a notary, who (the notary) shall moreover write the other deeds connected with the transaction. In case there be no notary in the place, then a clerk, brought for the purpose by the commissary-  
 425 general, shall reduce to record the act and decision of the meeting."

Article 133, which is as follows :

"ART. 133. When the term prescribed by law expires the commissaries or subcommissaries shall send the expediente, together with an accompanying report, to the Supreme Government, without whose approval the sale, purchase, or contract can not be carried into effect."

Article 134, which prohibits any member of the board being interested in the sale, under penalty therein prescribed, which said article is as follows :

"ART. 134. When it appears that any one of the members of the auction meeting, by himself or through another person, bought or sold at the auction sale for his own use, then the sale shall be null, and he shall be punished by the infliction of such penalties as the law imposes on like transgressors."

Mr. REYNOLDS. I also offer in evidence a portion of the decree of October 3rd, 1835. (See Mexican Statutes at Large, vol. 3, p. 75.)

Article 2, by which the state legislatures are abolished, which said article is as follows :

"2. The legislatures shall cease at once in the exercise of their legislative powers; but before dissolving (and legislatures that are in vacation shall convene for that sole purpose) they shall appoint a departmental assembly, to be composed for the present, of five individuals, chosen either among the members of the legislature or from outsiders in order that they may act, serving as a body of counsellors to the governor. In case the office of governor is vacant they shall propose three names to the General Government of persons having the qualifications heretofore required for that official employment. And until such governor is appointed his place shall be filled by the person answering to the first of the names presented to the Supreme Government."

426 Article 5, which said article is as follows :

"5. Likewise shall the other officers of an inferior rank remain in their present state employments, if their offices have not been disposed of otherwise. But they themselves and their offices, and the revenues and affairs under their management, shall be subject to and under the control of the Supreme Government of the nation, through their proper governors.

"And in order that the foregoing law may have full force in the administration of the revenues of the several states, his excellency, the Acting President, has issued the following regulation :"

Article 13, by which the governors are prohibited to sell any property without consent of the Supreme Government previously given until powers are given them by law, which article is as follows :

"ART. 13. (Of the regulations, same number.) Until the powers of the governors and departmental assemblies on matters of finance shall be declared by law, the governors shall not make any conveyance or estates or incur into unusual expenses in said matters of finance without the previous approval of the Supreme Government."

Article 15, which provides for the disposition of documents and archives in the hands of the several governments, which article is as follows :

"ART. 15. The Supreme General Government, through the agency of the secretary of finance, shall give the proper course to all documents, letters of consultation and expedientes that have been addressed to him by the governors. This he shall perform by sending the first of these matters to the general directory of revenues, or to the treasury-general, according to the class they belong to, and to their intended uses. As to the second, he shall make from the offices themselves such inquiries as will enable matters to be expedited and determined."

Article 16, by which the officers are required to furnish information and make suggestions with reference to such documents and archives for the service of the Supreme Government in its action, which said article is as follows :

"ART. 16. The general directory of revenues, and the treasury-  
427 general, through the agency of the minister of finance, shall make to the Supreme Government such observations as they consider proper to be made on documents received by them; and they may suggest appropriate matters, for the Government to dictate accordingly its necessary decrees to the several governors."



Mr. REYNOLDS. I also offer in evidence the resolution of the council of the government of June 23rd, 1835 (see Mexican Statutes at Large, vol. 3, p. 58), calling the special session of Congress for the purpose among other things of changing the form of government and adopting a new constitution, which said resolution is as follows :

"Number 1595. June 23, 1835. Resolution of the government council. A call for an extraordinary session of Congress.

"The council of government, in the exercise of the powers given to it by Article 116, of the federal constitution, resolves :

"1. That the general Congress shall be called to an extraordinary session.

"2. That it shall hold a preparatory meeting on the 16th of July next, and that its session shall be opened on the 19th of the same month.

"3. That the following matters shall be submitted and acted upon at such extraordinary session :

"I. The general tendencies of the people towards a change in the actual form of government.

"II. The acts to be done by the executive regarding the various government departments, as being urgently necessary, but which acts must be so declared to be by Congress in its extraordinary session.

"III. The administrative powers of both houses of Congress."

Mr. REYNOLDS. I offer in evidence the plan or basis for a new constitution of October 23rd, 1833 (see Mexican Statutes at Large, vol. 3, p. 89), as follows :

Article 1, which declares the national independence and establishes the national religion, which said article is as follows :

"ART. 1. The Mexican nation, one, sovereign, and independent until now, does not profess or protect any other than the Catholic Roman and Apostolic religion, nor will it tolerate the exercise of any other."

Article 8, which divides the nation into departments, which said article is as follows :

"ART. 8. The national territory will be divided into departments upon the basis of population, locality, and like circumstances. Their number, extent, and subdivisions will be fixed by constitutional law."

Article 10, which vests in executive power of the departments in the respective governor, subject to the chief executive of the nation. Legislative authority is vested in the departmental assemblies, subordinate, however, to the general Congress of the nation, which said article is as follows :

"ART. 10. The executive power of the departments shall be lodged in the governors, subject to the control of the supreme executive of the nation. The departmental assemblies shall be the counsellors of the governors. They shall be empowered to promote and do whatever may be deemed conducive to the welfare and prosperity of the departments, and they shall have administrative, municipal as well as electoral, and legislative powers, which shall be specified by law ; but in the exercise of powers of the last character they will be controlled by the general Congress of the nation."

Article 14. The treasury and other departments are to be systematized by law, which said article is as follows :

"ART. 14. A law shall be passed to systematize the finances of the nation in all their branches. It shall organize the system of records and

accounts and create the court of revision, as well as regulate the administrative and the contentious jurisdiction of this branch of the Government."

429 Mr. REYNOLDS. I offer in evidence the circular of the secretary of the treasury of December 7, 1835 (see Mexican Statutes at Large, vol. 3, page 108), in which the secretary of the treasury refers to and recognizes the centralization of the revenues, which said circular is as follows:

"December 7, 1835. Circular of the secretary of finance to the effect that only one salary shall be paid to employees, even if they hold two different offices.

"MOST EXCELLENT SIR: With this date I have said to his excellency, the governor of Zacatecas:

"MOST EXCELLENT SIR: Having delivered to his excellency, the acting president, your letter of the 27 of November last, touching the payment of two salaries to one employee holding two different offices at the same time, one under the Federal Government and the other under your department, his excellency has seen fit to declare that "if it was a fact before the centralizing of the revenues that one single employee could enjoy two different salaries at one and the same time, one of them under the federation and the other under his own State, because these were two different governments then; to-day, however, by operation of the said centralization of the revenues, it can not be permitted that one and the same Government pay out two different salaries at the same time to the same individual, there being an express prohibition in the matter. Employees of that description shall receive the salary which is the highest of the two stated afore, which by supreme order I communicate to you."

"And by order of the most excellent Acting President, I address this to your excellency that if there be any such employees in your department you may be guided by this provision."

Mr. REYNOLDS. I also offer circular issued by the secretary of finance of December 15, 1835, in which it is stated that by law of October 3rd the General Government has power to dictate the policy of the departments (see Mex. Stats., vol. 3, page 111), which said circular is as follows:

"Number 1669. December 15, 1835. Circular of the secretary of finance. Administration of the revenues and their expenditure in the departments.

"By article 5th of the law of October 3 last it is provided that State officers of an inferior rank shall remain in their actual positions, 430 if said positions have not been disposed of otherwise. But they themselves, and the offices, revenues, and matters under their charge, shall be subject to and under the controll of the Supreme Government, through the agency of their respective governors.' From the literal and express wording of this article it is clear that the Supreme General Government had once and now still has the power to dictate gubernative measures that it may deem proper for the administration of the revenues in the departments, etc."

Mr. REYNOLDS. I now offer the entire constitutio of 1836. (See Leyes Fundamentales, page' 171 to 217, including the signatures on page 217, especially that of F. G. Conde for the department of Sonora.)

(The signatures spoken of are not included in the official translation.—Clerk.)

I call particular attention to law 6, article 1, of this constitution, which divides the Republic into departments; which said said constitution is as follows :

*Number 1806.—Dec. 29, 1836.—Constitutional laws.*

In the name of the Almighty One God in three persons, who has destined all men to live in communities and does preserve them ; the representatives of Mexican nation, chosen by it to organize the form of government most conducive to its happiness, to that end, in congress assembled, decree the following constitutional laws :

*FIRST LAW.—Rights and duties of Mexicans, etc.*

ART. 1. Mexicans are : I. All persons born in the Republic from a father who is a Mexican by birth or nat'ralization. II. All persons born of a native Mexican family in a foreign country, provided that on becoming of age they already have settled in the Republic, or have given notice of their intention to do so, and they do so settle within one year subsequent to the giving of said notice. III. All persons born in a foreign country from a father who is a Mexican by nat'ralization ; but said father must still retain his Mexican nationality, and the son must perform the conditions mentioned in the foregoing paragraph. IV. All persons born in the Republic from a father who is a foreigner ; but they must have remained in the Republic until becoming of lawful age, and the father must have given due notice when coming into the Republic. 431 V. Those persons not born in the Republic, but who at the time of the achievement of its independence were in it, swore allegiance thereto and continued to reside within its territory since. VI. All foreigners who, having come into the republic lawfully, have obtained naturalization papers under the conditions provided by law.

ART. 2. The right of the Mexicans are : I. Not to be imprisoned except under the written and an' authorized order of imprisonment from the competent justice ; nor to be arrested except by the authorities who are empowered by law to do so. Criminals caught in the act are, however, made an exception ; as then anyone may apprehend the transgressor and deliver him to the proper justice or officer. II. Not to be detained longer than three days by any political public authority and to be turned over in that period into the charge of the judiciary ; not to be detained by these any longer than ten days without the proper legal order of arrest. All the said authorities shall be called to account for any abuse they may commit in the matter. III. Not to be deprived of property, nor of its use and enjoyment. Whenever public necessity shall require the taking of said property, he can only be deprived thereof, when in the capital, by the President and his four ministers, and in the departments by the governors thereof and the departmental assemblies, who shall declare the said taking to be a public necessity. The owner, be it a lay or ecclesiastic corporation or a private individual, shall be indemnified beforehand on an appraisalment to be made by two experienced men, one of whom shall be appointed by the party in interest himself. In case these appraisers cannot come to

an agreement, a third one shall be added as provided by law. The said compensation can be demanded in the capital before the supreme court, and in the departments before the proper superior tribunal. This demand will suspend executions of the sale until the entering of the decree in court. IV. Not to be tried or sentenced by commissions or tribunals other than those created by the constitution, nor under any other laws but those enacted prior to the commission of the act. V. Not to have his house and papers searched except in the cases and with the restrictions literally provided by law. VI. To be free to transport himself and his goods into a foreign country whenever he chooses to do so, provided there are no liabilities on his part to detain him in the country, and provided he pays the lawful duties on the exportation of said goods. VII. To be free to print and circulate, with a special prior authorization, of his political ideas. But abuses of this right shall be punished. Said abuses are clas'ified as misdemeanors, and until other laws shall be passed the courts can only impose on their commission such penalties as attach to the transgression of the press laws.

ART. 3. The duties of a Mexican are: I. To profess the religion of his country. Keep the constitution and the laws, and to obey the authorities. II. To cooperate in the defraying the expenses of the nation by paying such contributions fixed by law. III. To defend the country and to cooperate in maintaining and restoring public order, when they are required to do so by law and by the authorities acting under the law.

ART. 4. Mexicans shall enjoy all other civil rights and have all other civil duties to be created by law.

ART. 5. The character of Mexican' is lost: I. By being absent from the country for two years without applying in that period for the corresponding leave of absence from the Government. II. By remaining in a foreign country for two years after the expiration of the license without applying for a renewal thereof. III. By enlisting under a foreign flag. IV. By accepting honors from a foreign nation without the permission of the Mexican Government. V. By accepting offices from foreign governments. VI. For the crimes of high treason against the independence of the country, conspiracy against the life of the chief magistrate of the nation; for arson, poisoning, murder, treachery, and all other crimes to which the laws attach that penalty.

ART. 6. Persons who lose their Mexican character can obtain a rehabilitation from Congress in the cases and with the conditions required by law.

ART. 7. The citizens of the Republic of Mexico are: I. All those that have been mention in the first five paragraphs of article 1, and who enjoy a yearly rent of at least one hundred dollars from their capital, personal industry, or labor, said labor to be honest and of utility to the community. II. Those who have obtained from the general Congress letters of citizenship under the provisions of law.

ART. 8. The rights of the Mexican citizen are, besides those mentioned in article 2 and alluded to in article 4: I. To vote for all offices of direct popular election. II. To be voted for the same whenever he has the necessary qualifications.

ART. 9. The special duties of the Mexican citizens are : I. To register his name in the record of the municipality he lives in. II. To attend to all popular elections when not hindered by physical or moral impossibility. III. To perform all popular and public duties entrusted to him whenever not legally exempted or hindered otherwise by sufficient motives, which must be so declared legal or sufficient by the proper authority.

ART. 10. The special rights of the citizen are suspended : I. During his minority. II. By the condition of domestic servitude. III. For criminal cause, from the issuing of the writ for imprisonment until the rendering of a sentence of acquittal. If the acquittal is absolute the party shall be considered to have been in the enjoyment of all his rights as if there had been no order of arrest ; and no harm will accrue to him on that account. IV. For inability to read and write, counting from the year 1846.

433 ART. 11. The rights of the citizen are totally lost : I. In all cases in which the character of a Mexican is lost. II. Through conviction and imposition of a degrading punishment. III. Through fraudulent insolvency so declared. IV. For defaulting and bad management of public funds. V. For being an idler, vagabond, or not having any honest occupation. VI. By taking ecclesiastical orders, thereby becoming unfit for the exercise of the rights and duties of the citizen.

ART. 12. Foreigners lawfully coming into the country enjoy all natural rights, besides the rights stipulated in the treaties with the countries from which they come ; and they are bound to respect the religion and obey the laws of the country in matters concerning them.

ART. 13. A foreigner can not acquire real property in the Republic unless he has been naturalized, or has married to a Mexican wife and complied with all other provisions in the matter. Neither can he transport himself or his movable property to another country without going through the proper formalities and paying the amounts fixed by law. Acquisitions by colonists will be regulated by special laws on colonization.

ART. 14. The character of an inhabitant of a place is acquired by a two-years residence thereat ; and by stating during that time to the municipal authorities that the party intends to remain ; also by erecting a house, store, or entering into some useful trade.

ART. 15. Said character of inhabitant in a place is lost by moving into another locality, and by moving the house, store, or trade, and establishing the same and said other locality.

#### SECOND LAW.—*Sup. conservative power.*

ART. 1. There shall be a supreme conservative power to consist of five individuals, one of whom shall be renewed every two years. On the first, second, third, and fourth such occasions of renewals, the manner to determine which of the said five members shall go out will be by drawing lots. From the fifth time on, however, the person who has been longest in office shall vacate the same ; and members who have been subsequently coming in to replace outgoing ones, will not take part in the drawing of said lots.

ART. 2. The drawing of lots referred to in the foregoing article shall be done by the senate on the 1st day of August, immediately preceding

the said renewal of said conservative magistrates; and should the senate happened to be adjourned then the Government council will do the senate's duty in the matter.

ART. 3. The regular triennial elections, as well as special subse-

434 quent elections of these members, shall be conducted as follows: I.

A number of persons equal to the number of conservators to be elected, shall be appointed by every one of the departmental assemblies. II. Said appointments must take place on the same day in all of the departments, and only on the following dates: First, The bien'ial regular appointments shall be done on the first day of October, immediately preceding the said change of members in the said conservative body; and second, in a special election, or when it is to be for the five said members, or to fill up vacancies, then at the date to be determined by the Supreme Executive Government. III. Special elections for the filling of vacancies shall take place only when said vacancy occurred at least six months prior to the regular biennial change of officers. Should it occur later than that period, then the election has to be postponed until the regular term of the 1st of October, as stated. IV. Said elections shall have to be made by an absolute plurality of votes, and when once so made the departmental assemblies will send by the next mail the elections proceedings to the clerk of the chamber of deputies; they shall do so in a sealed letter certified by them. V. Omission to hold said elections on the date prescribed, as well as to send the election proceedings as stated, shall create a liability on the part of the departmental assemblies to be dealt with as shall be hereafter prescribed by law. VI. On the 15th day of November, immediately preceding the biennial regular elections, and forty days prior to the holding of any special election, the chamber of deputies shall proceed to open the sealed letters and to make a full list of all the persons elected by the departmental assemblies. Then when said list shall be completed, it shall select therefrom the names of three individuals for each vacancy that it is proposed to fill. VII. On the day following the election of said three names for each vacancy, the chamber of deputies shall send the same to the senate, together with the proceedings; whereupon the Senate will on the same day select one name out of every three and make the result known to the public; and communicate the same to the Chief Executive, that it may notify duly elected members to present themselves at their new field of duty.

ART. 4. Members of this body can be reelected to the same office, and when so reelected they are at liberty to accept or decline, as they may choose.

ART. 5. In addition to these regular conservators there will be elected also three suppletory ones, who shall be residents of the capital. Their qualifications, the manner of their election, and the time for the holding of the same shall be as prescribed for regular conservators.

ART. 6. The said suppletories will officiate during the absence or inability of the regular ones, and in the order of their election. While thus officiating they shall enjoy the same emoluments and p'rogatives as the regular conservators.

435 ART. 7. They shall also fill up temporary vacancies until the regular election is held to provide for the same vacancies otherwise.



ART. 8. Election to this office shall be of greater moment than election to any other office, that of president excepted. Moreover, members-elect can not resign before or after coming into office, except on account of physical inability, the sufficiency of which has to be passed upon by Congress.

ART. 9. The said supreme conservators shall take an oath before the two houses of the legislature in Congress assembled, and the form of their oath shall be: "Do you, and each of you, swear to keep the constitution of the Republic, and compel others to keep it, by maintaining the constitutional powers in equilibrium and by guarding constitutional order, and restoring the same when disturbed, using for those ends all the powers and means that the constitution gives you?" On answering in the affirmative to this oath the clerk will use the familiar formula: "If ye do this may God reward you; if not, then may he call you to account." Should Congress happen to be adjourned, these supreme conservators may take a temporary oath among themselves; but that oath must again be repeated before Congress when it convenes next.

ART. 10. The annual salary of each one of the supreme conservators shall be six thousand dollars, and their address shall be that of excellency.

ART. 11. In order to be eligible to the supreme conservatorship the requisites are: I. To be a Mexican by birth, and in the actual enjoyment of the rights of citizenship. II. To be at least forty years of age from the day of election, and to possess a capital (physical or moral) yielding an income of not less than three thousand dollars yearly. III. To previously have held any of the following positions, namely, President or Vice-President of the Republic, senator, deputy, minister of the cabinet, or magistrate of the supreme high court of justice.

ART. 12. The powers of this supreme conservative body are: I. To declare null and void any law or decree within two months after their sanction, provided said law or decree is contrary to any express provisions of the constitution, and provided also their said declaration to that effect is requested by the supreme executive or by the high court of justice, or by a body of at least eighteen members of Congress signing to the petition. II. To declare null and void, at the request of the supreme court of justice or of Congress, any such acts of the executive as are contrary to the constitution and the laws; but said declaration shall be made within four months from the promulgation of said acts. III. To declare, likewise, null and void, at the request of one or both of the other two powers, such acts of the supreme high court of justice as are done by it in the assumption of faculties that do not belong to it. Should

436 the declaration be against the supreme high court, the conservative power will furnish the proper information to the corresponding tribunal, that it may proceed to investigate the matter judicially, and render the verdict that it arrives at in the matter. IV. To declare, at the request of Congress, when a physical or moral inability of the President of the Republic exists. V. To suspend the high court of justice at the request of one or both of the other two powers, whenever it refuses to recognize either of them, or attempts to disturb public tranquillity. VI. To suspend, as long as for two months, the sessions of Congress, and to order suppletories-elect to report for duty in place of regular Congressmen, provided the welfare of the country demands it and the supreme execu-

tive so requests. VII. To reestablish under the constitution such or all of the three supreme branches of the Government as may have been upset by revolution. VIII. To declare, at the request of the legislative branch, what is the will of the nation on matters introduced for legislative consideration, by any of the other two powers, provided the case is so extraordinary that the national will must be explicitly known. IX. To declare, at the request of the departmental assemblies, when the welfare of the nation demands, that the President of the Republic shall change the members of the cabinet. X. To grant or deny their confirmation to amendments of the constitution made by Congress; said granting or denial of confirmation to be in the manner prescribed by the constitutional law having reference to that matter. XI. To confirm the election of the senators and pass upon their qualifications. XII. To appoint every year, one the first day of January, a commission of eighteen lawyers, who hold no offices whatever, to try the magistrates of the supreme high court of justice and of the court-martial whenever said magistrates have made themselves liable to prosecution as prescribed in the constitution.

ART. 13. In order to make their acts valid and conclusive at least three conservators out of the five must concur in a decision or determination.

ART. 14. All declarations and acts of this supreme conservative power other than those described in article 12th shall be null and void; and even these described declarations and acts shall be null and void if done by the supreme conservative power of its own accord, and without being requested to do so by any of the other three powers mentioned.

ART. 15. All acts or declarations of the supreme conservative power that are based upon or conform to prior acts and declarations of theirs, must implicitly obeyed by all to whom they are addressed; and a formal disobedience of them shall be high treason.

ART. 16. These supreme conservators can not, during the period of their incumbency, nor for two years after, be elected to the presidency, nor obtain offices or commissions, nor petition the Government for any kind of grants for themselves or for others. Neither can they be elected to the chamber of deputies within the limitation stated in article 42 of law *law* of 437 30th of November last.

ART. 17. This supreme conservative power is amenable for its acts only to God and to public opinion; and its members shall at all times be privileged in their opinions.

ART. 18. If any of the members of said body happen to commit a crime he shall be accused before Congress, the two houses thereof being united for that purpose; and Congress, by an absolute plurality of votes, shall declare whether or not a true cause lies. Should it decide in the affirmative the accused shall be dealt with by due process of law before the supreme court of justice. This supreme court, moreover, shall also be the proper tribunal for all civil actions in which any of said conservative members are defendants.

ART. 19. This supreme conservative power shall ordinarily reside in the capital; but if the public safety or their own safety require it otherwise, then it may transport itself to any other locality in the Republic for any limited period of time.

ART. 20. On the first day of each biennial constitutional term, the supreme conservative power shall elect a President and a secretary from

its own members, and these officers may a second time be reelected as the conservative power may desire.

ART. 21. All correspondence from any of the other powers of the Government with this supreme conservative body shall be addressed to the secretary.

ART. 22. All votings and deliberations of this body shall be private and the votings shall be by casting white and black ballots in the ballot-box.

ART. 23. Although rooms shall be set apart for this conservative body in the national palace, still it shall have no fixed time or place of meeting, and the President thereof shall call said meetings when necessary by means of private letters to his several colleagues stating therein all circumstances he may deem proper in the case.

THIRD LAW.—*The legislative department, its members, and the making of laws.*

ART. 1. The supreme legislative power of the Government is vested in the general Congress, composed of two houses.

CHAMBER OF DEPUTIES.

ART. 2. The bases for the election of deputies to the lower house shall be population. There shall be elected one deputy for every one hundred and fifty thousand people, as also for every fraction of that number that reached up to eighty thousand people. Departments, however, which do not come up to that number of inhabitants shall be entitled to representation by one deputy. A number of suppletory equal to the number of proprietary deputies shall also be elected for emergencies.

438 ART. 3. One half of the members of each one of the houses shall be renewed every two years. The departments of the Government will also be divided into two sets approximately equal in population, and the first two years one of these sets will elect its deputies. The next two years another one will do so, and so on alternately.

ART. 4. In all the departments the election of deputies shall take place on the 1st Sunday in October of the year immediately preceeding their term of office; and said deputies elect shall enter upon the discharge of their duties in January of the following year. There shall be a special law to fix the time, manner, and form of said elections, as also the qualifications and number of the electors.

ART. 5. The elections of the deputies shall be confirmed by the senate; it shall also pass upon the qualifications of the deputies elect; but in so doing it shall confine itself to investigate whether or not they possess the necessary qualifications, or whether or not there was any defect connected with the electoral assemblies that would necess'arily vitiate the election, in the case of a defect in the electoral assembly, that will be ordered to be corrected; in case of defect in the party or parties elected, a new election shall have to be held again. Again, in case the proprietary deputy elect should be found to lack the constitutional qualifications, then the suppletory one shall be called in his place; moreover, whenever the proprietaries, through some reason or other, can not be present, the suppletories shall act in their stead.

ART. 6. To be a deputy the requisites are : I. To be a Mexican by birth, or a native of any section of America that in 1810 was subject to Spain, and is now independent, provided said natives resided in the Republic at the time of the achievement of its liberty. II. To be a Mexican citizen in the actual enjoyment of his rights ; and to be a native or inhabitant of the department from which he is elected. III. To be at least thirty years of age on the day of election. IV. To possess a capital (material or moral) that yields him an income of at least one thousand dollars yearly.

ART. 7. The following persons *can* not be deputies, namely, the President of the Republic and the members of the supreme conservative power during their office as such, and one year afterwards ; the magistrates of the supreme high court of justice, and of the court martial ; ministers of the cabinet and clerks of their offices ; the employees of all offices under the ministry of finance ; the governors of departments during their office as such, and six months after ; the very reverend archbishops and bishops, mitred personages, ecclesiastical provisors, and vicars general ; judges, commissioners, and commanders general ; these latter minor individuals can not be so elected deputies for the departments in which lies their particular charge or office.

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## SENATE.

ART. 8. The senate shall be composed of twenty-four senators, elected in the following manner : The Government, in a meeting of the cabinet, the chamber of deputies, and the supreme court of justice, shall each one, by an absolute plurality of votes, elect a number of persons equal to the number of senators to be elected. The three lists thus formed shall be certified to by the proper clerks of each one of these bodies, and then sent to the departmental assemblies. The said departmental assemblies shall then proceed, each one, to select from those lists, a list of individuals equal in number to the number of senators to be elected, *m*which names shall be sent to the supreme conservative power, who shall examine the said lists and determine the election according to what is provided in article 5th of this law, and then declare as senators those who happen to receive the majority of the suffrages of the departmental assemblies, and in the order of their majorities. Whenever a tie occurs lots shall be drawn to determine who shall be senator.

ART. 9. Every two years one-third of the senate will be renewed in the following manner : At the end of the first two years eight senators last in the list of majorities shall vacate the office ; at the end of the second year the eight senators second to the first eight in the list of majorities shall vacate ; and lastly, at the end of the third biennial term, the remaining eight senators of that list shall vacate.

ART. 10. This election of senators described in the eighth article of this law shall take place on the 3rd day of July of the year immediately preceeding the said ch'nge of senators, and the departmental assemblies shall have their said elections for senators on the 15th day of August of the same year, and the declaration and confirmation of the same shall be made by the supr'me conservative power on the first day of October of the same year ; whereupon the chief executive will then notify each senator of his election.

ART. 11. Vacancies occurring in the senatorial office shall be filled by the holding of a special election in the manner stated in article 8th, mentioned, and the senator so elected shall proceed to fill the vacant senatorial seat, but his term of office will last only as long as the term of the one he represents.

ART. 12. The qualifications for the senatorships are: I. To be a citizen in the actual enjoyment of his rights. II. To be a Mexican by birth. III. To be at least thirty-five years of age on the day of the election. IV. To possess a capital (material or moral) that yields an income of at least twenty-five hundred dollars yearly.

ART. 13. The following persons can not be senators: The President of the Republic during his office as such, and one year after; the members of the supreme conservative power; magistrates of the supreme high  
440 court of justice and of the court martial; ministers of the cabinet and the clerks of their offices; the general officers of finance; and the governors of the departments during their office as such, and six months after.

#### THE LEGISLATIVE SESSIONS.

ART. 14. The sessions of the general Congress will commence on the first day of January and on the first day of July of each year. The session of the first part of the year may be adjourned on the 31st of March; the session of the latter part on any day after Congress has terminated the business to which it exclusively lends its attention during said session. This term exclusive has reference to the examination and approval of the fund fixed for the cost of the Government for the coming year, and the accounts rendered by the ministers of finance for the year next preceeding the last.

ART. 15. Congress shall hold session every day of the term, except church festivals and civil holidays, which are to be so declared by a secondary law.

ART. 16. The regulations for Congress shall prescribe the hour for the opening of the sessions, and how long the same shall last; it shall also prescribe the length of time for which each one of the houses shall take a recess, together with the manner thereof and all other preliminaries relating to the sessions as well as to the deliberations and votings of Congress.

ART. 17. In order to submit any law or decree to the vote of Congress it is first necessary that at least one-half of the congressmen of each house shall be present, and all matters submitted to a vote have to be determined by a majority of the quorum present as stated, excepting those cases where the laws shall require a larger number than one-half the congressmen of each house to constitute a quorum.

ART. 18. When it is sought to adjourn Congress a formal decree to that effect shall be passed by both houses and then sanctioned and promulgated by the chief executive.

ART. 19. Should Congress determine not to adjourn on the 31st of March during its session of the fore part of the year, or should the President by notice of the council request a prolongation thereof, then a decree to that effect shall be passed and promulgated. But said decree must specify the matters with which Congress shall deal during the said pro-

longation of its regular session ; but it will not state the time that it shall last, as it shall take such time for its deliberations as is necessary and it can dispose of during the months of April, May, and June.

ART. 20. The President, with the advice of the council, may, during the vacation of Congress, require the permanent deputation to call it to extraordinary sessions. He may also specify the matters that Congress shall be called upon to deal with, and the same shall confine itself to such matters and deal with no others. So may the permanent deputation  
441 call Congress to extraordinary sessions, provided the executive agrees to it, and the executive can not refuse so to agree unless with the advice of the supreme conservative power.

ART. 21. The arrangement for the taking up of matters by Congress, as stated in articles 14, 19, and 20, shall not be an obstacle to calling of other matters coming up at the time, provided they are of the utmost moment and of interest to the public, according to the opinion of the executive and of the majority of both houses. Neither will that be an obstacle for Congress to deal with such impeachments as may be brought before it, nor to give its attention to other matters of an administrative character.

ART. 22. Even if the general Congress should adjourn, the senate may still continue in session until it has gotten through with the revisions of such laws as have come before it for revision.

ART. 23. In the cases of the suspension of Congress as mentioned in article 12th, paragraph sixth, after two months stated have elapsed, the permanent deputations shall again summon Congress to resume its interrupted sessions. Congress, however, may so convene again without waiting for the said summons.

ART. 24. In the same case of the suspension spoken of in the foregoing the President likewise has the power to provide a quorum for the chamber of deputies by calling the supplementary members to sit in Congress, but they shall do so no longer than the two said months at any given time.

#### OF THE MAKING OF LAWS.

ART. 25. All laws shall originate in the chamber of deputies. To the senate belongs only the revision of said law.

ART. 26. The right to propose laws for their passage belongs : I. In all matters whatsoever, to the executive power and to the deputies themselves. II. To the supreme court of justice in matters that concern it. III. To the departmental assemblies in matters of taxation, public instruction, trades, commerce, municipal government, and constitutional amendments.

ART. 27. The supreme executive and the supreme court of justice can each, in matters relative to them, propose laws declaratory of other laws, and so can the deputies themselves, provided not less than fifteen concur in so doing.

ART. 28. In all cases where the supreme executive or the deputies propose laws which under article 26 may be so proposed also by the supreme court of justice or by the departmental assemblies, the opinion of these must be first heard before passing to the discussion of the law.

ART. 29. All laws proposed by the executive and judiciary must be submitted for discussion, so as to laws proposed by the majority of the departmental assemblies. Laws other than those may or may not be submitted,



442 accordingly as the chamber of deputies may choose, after hearing the report of a committee of nine deputies, yearly appointed, and which shall be called the committee on petitions.

ART. 30. Any private citizen whatever may also address a bill, of matters concerning himself, either to any of the deputies or to the municipal council of the capital cities. If it is to be a deputy he addresses his bill, the said deputy may, if he so choose, make that his own bill; if to any of the municipal councils, they shall determine whether or not it is beneficial that said bill should pass; and if they shall be of opinion that it is, they will send it in turn to their proper departmental assembly; but said bill will not be considered as an initiative until it has gone through all these proceedings and has received the approval of the departmental assembly.

ART. 31. When a law shall have been passed by the chamber of deputies, in all and every one of its articles, it shall be sent to the senate for revision by it, together with the record of the whole proceedings in the matter.

ART. 32. In its revision of any law or decree the senate shall have no power to make any changes or amendments, it shall confine itself to approve or disapprove, and on sending the same back to the chamber of deputies it shall accompany it by a detailed account of its own deliberations in the matter; thereby to enable the lower house to more intelligently reconsider those parts of the law that have not met with the approval of the senate and the changes or amendments that in the senate's opinion should be made.

ART. 33. If then the law or decree should pass again in the lower house by a majority of two-thirds in its original form, the senate, to whom again it shall be sent for revision, will have to disapprove it by a two-thirds majority; otherwise by that very fact it shall stand approved.

ART. 34. All laws and decrees that have passed both houses, shall be sent to the President for his sanction. But when the said law refers to amendments of the constitution, the proper body to lend that sanction is the supreme conservative power.

ART. 35. When the law has passed in both houses, and does not appear to the President to be good law, he may veto and send it back to the chamber of deputies within fifteen days from its passage, and the President shall accompany it by such remarks as by the advice of the council he deems appropriate. Should the said fifteen days elapse and the President fail to so return it, it then becomes law.

ART. 36. Bills coming under art. 33, that have gone through a second revision by Congress, may by the advice of the council be vetoed by the President, and he shall give notice of this to Congress.

ART. 37. Laws vetoed and sent back by the President shall again be submitted to a formal revision by Congress; and when two-thirds of each house concur in passing them as they stand, they shall pass over the  
443 President's veto; thereupon it devolves upon this magistrate to promulgate them as laws, but should two-thirds of both and each of the houses fail to concur in their passage, they shall be then and there dropped.

ART. 38. Laws thus rejected, or left unsanctioned, as stated in articles 33, 36, and 37, shall not be taken up again for consideration by Congress,

nor shall the matter be again referred to until one-half of the deputies have been renewed through election as provided in Article 3. As for amendments to the constitution that have been vetoed by the supreme conservative power, if, subsequent to the said renewal of the one-half of the deputies, Congress insists that they shall pass, they will indeed pass, by a majority of two-thirds of the quorum present in each house. When that is done, the sanction of the supreme conservative power no longer becomes necessary, but they shall then and there be promulgated and stand as laws.

ART. 39. When once the law is sanctioned, the President's duty is to promulgate it, in the usual manner, in the capital of the Republic, in the capitals of the departments, and in all towns and villages; in order to do so in these second-mentioned places, he shall send the same to the governors and through them to all the inferior officials, which said officials if they fail to make the said law public within three days from receipt, shall be held to account for their nonfeasance.

ART. 40. This said manner of publication shall not be requisite in the case of private statutes, but they must, however, be published in the Government newspapers.

ART. 41. The formula for the promulgation of the laws shall be: "The President of the Republic of Mexico, to its inhabitants greeting: Know ye, that the general Congress has decreed (here the law). Whereupon I command it to be printed and circulated and to be obeyed."

ART. 42. Once that a law is promulgated, it is binding from that date, unless a future date is fixed in the body thereof, making it binding from said future date. No mandatory law shall be binding until the day of its promulgation in a locality.

ART. 43. All resolutions passed by the general Congress shall have the character of laws and decrees: Laws are such as relate to matters of general and public interest; decrees are statutes that refer to specific times, places, institutions, corporations, or persons.

ART. 44. General Congress shall have the exclusive power: I. To pass all laws relating to the several branches of the Government, and to repeal, construe, and dispense with the observance of the same. II. To approve, reject, or amend the legislative acts of the departmental assembly. III. To fix by law the probable expenses of the Government for the coming year, and all contributions to be levied. The contributions so fixed shall

444 cease to be levied with that year, unless continued by express statute to the next one. IV. To yearly examine and approve the expenditures of funds belonging to the year next preceding the last; said account shall have to be rendered by the minister of finance during the last year, and commented and compared by him in the manner to be fixed by a secondary law. V. To fix the number of land and naval forces that the Republic shall have standing, and every year to assign the number of militia that shall be in service the coming year, enjoying the authority to increase or reduce it as the circumstances shall require. VI. To empower the executive to contract national debts upon the security of the national credit, and to fix what the said securities shall be. VII. To recognize the debts of the nation and to prescribe the manner and form of liquidating them. VIII. To confirm all treaties entered into between the executive and foreign powers, as well as concordats with the Apostolic Sec. IX. To declare war, approve treaties of peace, and to regulate the manner of grant-

ing letters of marque and reprisal. X. To give the Government all such instructions as are necessary for the opening of seaports, establishing custom-houses and tariffs on the goods of commerce. XI. To prescribe the weight, name, shape, and alloy of the coin, and to adopt the system of weights and measures it may deem more proper. XII. To permit or prohibit foreign armies to enter into the Mexican territory; likewise to permit or prohibit national troops to go beyond the limits of the Republic. XIII. To grant general amnesties, in the cases and manner provided by law. XIV. To create or abolish any public office; to increase or cut down the public salary attached thereto; and to prescribe general rules for the retirement from office, as well as for pension and superannuations of officials. XV. To prescribe general rules for the granting of naturalization and citizenship papers; and to confer the same by virtue of said papers. XVI. To augment or cut down the number of departments in the Republic; this to be done by segregating or dividing them or by merging them into others.

ART. 45. The prohibitions of the general Congress are: I. To pass any law or decree without the usual formalities of law and subject to the regulations for Congress. II. To banish Mexicans, nor to impose directly upon him penalties of any description whatever; the mission of the law is to prescribe in a general manner what penalties shall attach to certain crimes, and it can go no farther. III. To deprive no one, directly or indirectly, of his property, whether the owner is a private individual or a civil or ecclesiastical corporation. To the law alone belongs the right to impose contributions and taxations. IV. To pass no retroactive laws, declaratory statutes excepted. V. To deprive Mexicans of their constitutional rights, or to suspend those rights as they stand declared in these laws. VI. To arrogate to itself or to give others, by way of exercising extraordinary prerogatives, any one or all of the other powers of government, to wit, the executive and judicial.

445 ART. 46. Whatever statute shall be passed by Congress in express derogation of the foregoing article shall be ipso facto null and void.

#### POWERS OF THE TWO HOUSES OF CONGRESS AND PRIVILEGES OF MEMBERS.

ART. 47. No impeachment can be brought against the President for common misdemeanors, from the day of his election until a year after his termination of office; so also as to senators, from the day of their election until two months after the termination of their office; nor against the magistrates of the high court of justice, or the court-martial; nor against ministers of the cabinet, counsellors, and governors of the departments, except before the chamber of deputies. When the impeached shall be a deputy the impeachment, in order to be brought wit'in the prescribed limitation, shall be so brought before the senate.

ART. 48. In the stated period also, the lower house is the proper authority to decide whether or not impeachment lies for breach of duty against the following officials, to wit: The President of the Republic, ministers of the cabinet, magistrates of the supreme high court of justice and of the court-martial, the members of the council, governors of departments, and departmental assemblies. The said breaches of duty touching the three

last-mentioned bodies shall have reference to the 5th paragraph of article 3rd, second constitutional law; to the 3rd paragraph of the fourth constitutional law, and to the first three paragraphs of article 15 of the sixth constitutional law. In case the lower house *is* of the opinion that an impeachment lies, it shall appoint two of its own members to prosecute the matter in the senate. When once it acquires jurisdiction thereof, and after hearing the pleas of the complainants and of the defendants, the senate shall pass sentence according to the evidence produced. It can not inflict, however, any punishment except that of removing the accused from his office, or to temporarily or perpetually disqualify him for holding any public office whatsoever. Yet, if on the trial of the case the senate shall be of the opinion that the accused deserve a greater punishment, he shall be turned over to the ordinary tribunals, that he may be dealt with according to law.

ART. 49. In the case of ordinary crimes, when the impeachment is once presented, it is the duty of the chamber of deputies to declare whether or not a true cause lies; and if it does so decide, the accused shall be turned over to the ordinary tribunals for trial. In the case of impeachment against the President, it is necessary that the senate should concur with the chamber in finding of a true cause.

ART. 50. The said finding of a true cause, both in the case of official malfeasance and in ordinary crimes, suspends the culprit's functions and prerogatives and his rights as citizen. Other matters relating to these congressional tribunals, setting out more fully the provisions relative to the accuser and the accused, as well as the form of procedure in such cases, shall be treated in detail in the proper regulations for Congress.

446 ART. 51. Each one of the houses of Congress shall have the power without the intention of the other: I. To adopt all necessary measures as to its place of 'invening, and for the office of its secretary, as well as for all other dependent offices. Likewise as to the appointment and salary of its minor employees, and in all other matters whatsoever that have reference to its internal government. II. The correspondence between one or both houses and the Government shall be carried on by means of committee so chosen from their own numbers, and moreover, said correspondence shall be in writing.

ART. 52. Besides the powers already stated, the chamber of deputies shall have exclusive right: I. Through a committee of five, chosen from its own members, which shall be called an inspecting committee, to watch over the proper discharge of their duties by the chief auditing officials of th' general offices of finance. The manner and form in which this inspecting committee shall perform its duties will be set out by a secondary law. II. To appoint the principal and other officials and employees in the central auditing office. III. To confirm the appointments made by the government for chief officials of the general offices of finance.

ART. 53. To the senate exclusively belongs the right: I. To consent to the permit given by the President for the enforcement of decrees of ecclesiastical synods, papal bulls, and rescripts that may be of a general paramount importance to the nation. II. While the general Congress is in vacation, the senate shall have power to deal with the impeachments mentioned in article 47; also to grant or deny the permits spoken of in paragraph 12, of article 44; to which ends the senate may be summoned

to assemble by the permanent deputation. III. To confirm the appointment by the President of diplomatic envoys, consuls, colonels, and other high officers of the standing army, of the navy, and of the militia in active service.

ART. 54. The salary of the senators shall be greater than that of deputies, and they shall both be fixed afterwards by a secondary law.

ART. 55. Deputies and senators shall be privileged in the expression of their opinions during the performance of their duties, and at no time and by no power shall they ever be molested or called to account for that matter.

ART. 56. Besides the prohibitions contained in regulations for Congress, congressmen shall not: I. Resign their office without any grave and just cause which shall be so declared to be grave and just by their proper houses. II. Admit nor ask for themselves nor others, during their term of office, nor one year after, employment or commission under the Government; nor to accept or solicit any promotion to which they are not strictly entitled according to law. III. To obtain or solicit for  
447 themselves or for others within the stated limitation any pension or honors from the Government.

#### THE PERMANENT DEPUTATION.

ART. 57. The permanent deputation shall consist of four deputies and three senators, the first to be selected by the chamber of deputies and the second by the senate at the closing of the first ordinary session of the constitutional term.

ART. 58. The powers of this deputation are: I. To summon Congress to convene in extraordinary sessions whenever the president shall so declare or the deputation deems it necessary under the provisions of article 21. II. To summon Congress to reassume its legislative sessions suspended in the manner stated in article 24. III. To summon the senate to convene in the cases and for the purposes stated in article 53, paragraph 2. IV. During the vacation of the general Congress to grant or deny permission to congressmen for absenting themselves from the capital. V. To keep guard during the said vacation over the constitution in order that no violations of the same be committed.

#### FOURTH LAW.—*The supreme executive power.*

ART. 1. The executive power of the nation shall be vested in a supreme magistrate called the President of the Republic. His term of office shall last for eight years, and his election shall be held in the following manner:

ART. 2. On the 16th day of August, immediately preceeding the change of the supreme magistrate, the President, in a joint meeting of the council and his cabinet, the senate and the high court of justice, shall select three names and on the same day present the names so chosen to the chamber of deputies. This shall on the day following select three names from the nine presented to it, and then submit the said three names to all the departmental assemblies. Thereupon these assemblies will each one select that name of the three which is most agreeable to it, and this shall be done precisely on the 15th day of October of the year immediately preceeding the

change of President, and each one shall remit the same, together with a minute of the proceedings, to the secretary of the chamber of deputies. This shall be done in a sealed communication and by the next mail. Failure to perform this shall create a responsibility on the part of the departmental assemblies. On the 15th day of the month of December next, the two houses of Congress will jointly assemble and proceed to break open the sealed communications from the departmental assemblies and they shall appoint a committee of five to examine and pass upon the said election. This committee, however, has power only to pass upon the constitutional nullity or validity of the said elections, and so make a list of the votes cast by the departmental assemblies, reporting the same to Congress.

On the discussion and adoption of said report the person who shall  
448 have received the highest number of the votes of the assemblies shall be proclaimed as President. Where a tie occurs Congress shall draw lots between the two names concerned and he on whom falls the lot shall be the President.

ART. 3. The acts stated in the foregoing article shall be null and void unless precisely done on the days fixed. Only in the case of great social upheavals that hinder the reunion of Congress or of the greater portion of the departmental assemblies shall Congress have the power to change the dates thereof, and then only by a majority of two-thirds of each one of its two houses. But t'is shall take place only under straining conditions and in no other case.

ART. 4. There shall be issued a decree stating the result of this election and solemnly promulgated by the Government; the same shall be communicated to the President-elect, in order that he may present himself to take the oath and enter upon the duties of his office on the second day of the following January.

ART. 5. The retiring President can always be reelected, provided his name has been proposed in the triple list mentioned in paragraph 1, of article 2, and provided it comes up as one of the three names selected from said lists by the departmental assemblies as per paragraph 2 of the said article 2; and provided, also, that he shall obtain a vote of three-fourth' majority from the departmental assemblies.

ART. 6. The presidential office can not be renounced except in the case of a reelection, and even then only for reasonable and just motives, the sufficiency of which shall have to be passed upon by Congress.

ART. 7. If the President-elect is not in the capital Congress will appoint a day for him to be there.

ART. 8. During the temporary absence of the President of the Republic, the chairman of the council shall act in his stead. The council shall also be the proper custodian of the Government during the time intervening between the accession of the new President and the termination of office of the retiring one.

ART. 9. The term of President shall expire on the 1st day of January of the first year of the next presidential term.

ART. 10. In the case of vacancy caused by death or legal deposal of the President, another election shall be held in the manner prescribed in article 2. Congress, by a special decree, shall set the days for the holding of the said election. Should this vacancy occur during th last year of the presidential term, the said election shall be as will be stated in



the following article, and the magistrate thus elected shall act only until the next regular President shall be duly installed in office, as provided in article 2 of this law.

ART. 11. Between the time when the vacancy occurs and that when a new President, whether regular or special, who is elected, that office shall be occupied by an acting president elected in the following manner: The names of three persons duly qualified to be President shall be selected by the chamber of deputies and sent by that body to the senate; on the day following the senate shall select one from the three names submitted and the person thus chosen shall act as President. The chamber of deputies shall be informed of the result and the decree of the appointment will be submitted to the Government for sanction. Thereupon the Government shall notify the person elect to present himself for duty as acting President.

ART. 12. The President, be he regular, special, or simply an acting one, shall, before entering upon the duties of his office, take an oath before the two houses of Congress, jointly assembled, and the form of his oath shall be: "I, N——, President-elect of the Republic of Mexico, swear by Almighty God and by the Holy Gospels that I will faithfully perform the duties of my office, and that I will keep and enforce the constitutional laws of the nation." The formalities of the inauguration shall be prescribed by the regulation for Congress.

ART. 13. Whenever the President is visited by a physical or moral inability for office, the request of Congress, mentioned in article 12, paragraph 4 of the second constitutional law, must be submitted by a majority of two-thirds of the deputies present in the lower house, and approved by an absolute majority in the senate.

ART. 14. The qualifications to be President are: I. To be a Mexican by birth and in the actual enjoyment of the rights of citizenship. II. To be at least forty years on the day of election. III. To possess a capital (material or intellectual) that yields an income of at least \$4,000 yearly. IV. To have held any of the superior or military offices. V. To have never been convicted of crime or of the embezzlement of public funds. VI. To reside in the Republic at the time of his election.

ART. 15. The prerogatives of the President are the following: I. To grant or deny his sanction to the laws and decrees of Congress in all cases except those saved in the third constitutional law. II. To have all bills and decrees proposed in Congress by him acted upon by that body, provided that such matters are of those that power is given to the President to propose. III. To be privileged, except as provided in articles 47 and 48 of the third constitutional law, from being accused criminally during his term of office and for one year afterwards. IV. To be privileged from being accused for political crimes beginning from one year after the termination of his presidential office. V. Not to be arraigned for crimes until the declaration of both houses to the effect that cause lies is made, as article 49 of the third constitutional law provides. VI. To make the appointment for the cabinet, and to remove and change the ministers thereof whenever he thinks proper. VII. To appoint and send before Congress two spokesmen to urge for the Government the passage of such measures as are proposed by the Government; but only in cases where the importance of the affair make' that step necessary in the President's opinion, and in the opinion of the council.

ART. 16. Like pre'ogatives shall attach to acting presidents as supple'tory presidents elected to complete an unfinished presidential term left vacant. The pre'ogative mentioned in Paragraphs III, IV, and V, however, shall extend to them only inn the period of two months, counting from the expiration of their term.

ART. 17. The powers of the President are the following: I. To issue in according with the proper laws of the matter all such orders and decrees for the administration of public affairs and the enforcement of the constitution and laws as may be requisite, and likewise, with the council's advice, to give all such regulations as become necessary for the execution of the same. II. To propose for congressional action such decrees and acts as, with the council's advice, he may deem convenient for the better government of the nation. III. To add, with the council's advice, all such comments as he thinks proper to all the laws of Congress that have been sent to him for promulgation, provided the said laws are of those excepted in the third constitutional law. IV. To promulgate, publish, and enforce the constitution, acts, and decrees passed by Congress. V. To make the requests in the matters and in the cases stated in article 12, Paragraph I and VI, of the second constitutional law. VI. To petition Congress to adjourn its regular sessions. VII. To decide upon the convocation of Congress to extraordinary sessions by the permanent deputation, and to pre-cripe, with the advice of the council, what matters are to be treated in said extraordinary session. VIII. With the council's advice to refuse his consent to having the permanent deputation call special meetings of Congress, as it is empowered to do by article 20 of the third constitutional law, in its second subdivision. IX. To watch that all collections and expenditures of contributions are done in conformity with law. X. To appoint the counsellors as shall be stated in this law. XI. To appoint, with the advice of the council of the governors of the departments, from among those persons who' names shall be presented to him by the departmental assembly. XII. To remove diplomatic officers whenever he deems necessary. XIII. To make all appointments of diplomatic officials, consuls, colonels, and the other superior officers of the regular army, as well as of the navy and the militia in service, and the head officials of all the principal offices of finauce. In the first cases the approval of the senate is requisite; in the other that of the cahmber of deputies, as prescribed in article' 52 and 53 of the first constitutional law. XIV. To make all other appointments for military employments and for all other offices according as the laws may prescribe. XV. To intervene in the appointments of judges and their officers of the courts of justice in conformity with the spirit of the 5th constitutional law. XVI. To grant discharge papers, licenses, and pensions as shall be provided by law. XVII. To have at his disposal the land and naval forces of the nation for the defense and security of the same. XVIII. To declare war in the name of the nation, subject to the consent of Congress, and to grant letters of marque and reprisal as shall be provided by law. XIX. To enter into concordats with the apostolic see, subject to the suggestions of Congress. XX. To dictate all diplomatic correspondence, and to enter into treaties of peace, amity, and alliance, and of truce and armed neutrality, subject before ratification to the approval of Congress. XXI. To receive ministers accredited as well as all other foreign envoys. XXII. To urge the

magistrates of justice to a prompt administration of the same, and to furnish them all necessary means for the enforcement of their decisions and judicial acts. XXIII. To suspend even for the space of three months and deprive of their salary for the same period those officers of his appointment who fail or refuse to obey his orders and decrees. Should he think proper that suit must be brought up against these transgressors, he shall furnish the information required to the proper tribunal for action in the matter. XXIV. With the senate's consent to grant or refuse the permission for their enforcement in the Republic of decrees of synods, papal bulls, briefs, and rescripts, provided that the same contain provisions of general usefulness to the nation. Should they refer to contentious matters the President shall consult with the supreme court of justice; and then again, if they are purely of an administrative character, he shall seek the opinion of the council. In the case of his refusal to allow their enforcement in the Republic, he shall give notice thereof to his holiness, and the motives that prompted his action, so that his holiness may act accordingly. XXV. With a concordat once entered into between the nation and the holy see, the President shall, in the spirit of its contents and with the advice of the council, nominate for church dignities and benefices for all those bishoprics in the Republic to which the nation has the privilege of nominating. XXVI. To grant or refuse under the advice of the council and in conformity with law such pardons as are petitioned of him. This shall be done after consulting with the court that rendered the sentence and with the supreme high court of justice. Until his decision in the matter is known the execution of the sentence is suspended. XXVII. To exercise due diligence in order that no fraud may be practiced in the coinage of the money. XXVIII. To provide whatever is beneficial to the better government of the departments. XXIX. To contract debts upon the credit of the nation, but subject to the due authorization of Congress. XXX. To open up and close seaports; to establish or abolish custom-houses, and to regulate the imposts on the introduction of articles of commerce, but subject in all to the basis given to him by Congress for procedure in the matter. XXXI. To issue, with the advice of the council and in accordance with law, such naturalization papers as are sought for by foreigners. XXXII. To give passports to Mexicans who desire to go to foreign countries, and to extend to them the time for returning when the original license has expired. XXXIII. To grant or refuse to foreigners leave to come into the Republic, and to eject from it such of them as may become suspicious and are not naturalized. XXXIV. To grant trade-marks and patent rights, with the council's advice, and under such conditions as the laws shall provide.

ART. 18. The President of the Republic is prohibited: I. From commanding in person the land or naval forces of the nation without the consent of the general Congress, or, should this be in vacation, then without the consent of the senate, which shall be by a vote of two-thirds of the senators present. During his command of the army as stated his presidential functions are suspended, and he becomes subject to the control of the Government. II. From depriving any one of his liberty or inflicting on him bodily punishment. Still, whenever the welfare or security of the public requires it, he may apprehend such persons as may become suspicious, and in three days at most deliver them over to the proper court.

452 III. From taking private property except in the cases and with the formalities stated in paragraph III, article 2, of the first constitutional law. IV. From going beyond the Republic during his presidential incumbency and one year after without the permission of Congress. V. To sell, cede, or convey any town, city, village, or any other portion of the national territory. VI. To sell or convey national properties without the consent of Congress. VII. From levying on his own responsibility, either directly or indirectly, any contributions whatever, general or special. VIII. To enforce the converse of the prohibitions contained in paragraphs 4, 5, 6, and 7 of article 2, of the first constitutional law, and those of paragraph, 5, of article 45, in the third constitutional law. IX. To impede or postpone the elections established by the constitutional law. X. To impede or postpone the meetings of the conservative power or to refuse to obey its decisions.

ART. 19. All acts done by the President in derogation of any portion of the foregoing article shall be null and void, and they shall make the minister authorizing them amenable to the proper authorities.

ART. 20. The President's salary, as well as the formalities that shall be observed toward him, shall be set out in the proper secondary laws.

#### OF THE COUNCIL OF THE GOVERNMENT.

ART. 21. The council shall be composed of thirteen persons, two of whom shall be chosen from the ecclesiastical order, two from the military, and the rest from the remaining classes of society. Their election shall be as follows: This present Congress will make a list containing thirty-nine names, and when that is done it shall pass it to the President of the Republic, and he shall select the thirteen councilors out of the thirty-nine names presented. After this, whenever vacancies occur, the senate shall propose three names for every one councilor to be elected and then pass the same to the President of the Republic, who will then proceed to make the proper selections.

ART. 22. When the election of the said thirteen councilors shall be completed the President of the Republic will, on the same day, pass the list of their names to Congress in order that this body may on that day select a person therefrom to act as the chairman of the council, as well as a suppletory chairman, who shall act in the absence of the proprietary. The said selection of a chairman for the council will in the future be made by the chamber of deputies on the tenth day of January, every two years, and the same will be reported to the President for his publication thereof. The retiring chairman of the council may again be reelected to the same office as such.

ART. 23. The office of councilor is for life, and councilors can not resign except for just cause, the sufficiency of which has to be passed upon by the President of the Republic with the advice of the council itself.

ART. 24. In order to be a councilor a person must be a Mexican by birth and possess the same qualifications as are required for deputies by article sixth of the third constitutional law.

ART. 25. The powers of the council are: I. All those powers stated in this and the other constitutional laws. II. To give its opinion to the Government in all matters and occasions that it shall ask for the same. III. To appoint one of their co-councilors to act as secretary and one to

act for him in case of absence. This appointment of proprietary and suppletory secretary of the council shall be made on the tenth day of January, every two years. The retiring said secretary may again be reelected to the same office.

ART. 26. The councilors shall be liable only for such decisions that they may give in contradiction to an express law, especially in the  
453 case of constitutional laws; also for bribery and corruption in office. For liabilities of that character they can be called to account only in the manner and form prescribed by the third constitutional law.

to authorize the same by subscribing to them, if they should agree with the President's views. III. To render a detailed report every year to Congress upon the condition of all matters under them. The minister of finance shall make the said report in the month of July each year, and the rest shall make theirs in in January.

ART. 32. All of these ministers shall be liable for all omissions to comply with the laws that have reference to matters of their office, as well as for acts of the President to which they shall attach their signatures and thus authorize the same, provided the said acts are contrary to law and especially contrary to the constitutional laws. The manner of calling ministers to account for these breaches shall be only as prescribed in the third constitutional law.

ART. 33. The Government shall make the regulations relative to the ministry, and he will also pass the same to Congress, when done, for its approval.

ART. 34. A secondary law shall fix the salaries of these officers, and until that is done the old law referring to that matter will be in operation.

#### FIFTH LAW.—*Of the judiciary of Mexico.*

ART. 1. The judicial power of the Republic shall be vested in a supreme court of justice, in the superior courts of the departments, in the court of finance to be created by the proper law, and in all the courts of the first instance.

ART. 2. The supreme court of justice shall be composed of eleven judges and one public procurator (Government attorney).

ART. 3. The supreme court represents the judicial authority in whatever comes within its jurisdiction that cannot be exercised by any  
454 other body than the supreme court. Its duty is to watch over the courts of the departments in order that they may be deficient in their proper personnel and in order that justice by them may be promptly and zealously administered.

ART. 4. For election to this supreme high court the conditions are : I. To be a Mexican by birth. II. To be a citizen in the active enjoyment of his rights. III. To be at least forty years of age. IV. Not to have been legally convicted of any crime. V. To be a lawyer and to have been engaged in the practice of that profession for at least ten years. The qualifications of Mexican nationality by birth shall not be required : I. In the case of persons born accidentally in a foreign country from a father who is a Mexican by birth; provided, that the said persons have settled

in the Republic from the time they became of lawful age. II. In the case of persons who were born in any of those portions of America that up to the year 1810 were subject to Spain; provided, the said persons settled in the Republic prior to the achievement of its independence. III. In the case of natives from provinces that formed formerly a portion of the territory of the Republic; provided, that prior to the separation of said provinces the said natives settled in the Republic.

ART. 5. In the future when vacancies shall occur in this supreme court, elections to fill the same shall be held in the same manner as for the President of the Republic.

ART. 6. When the result of the election shall be known the proper decree declaratory thereof shall be issued and published by the Government, whereupon the judge elect, as well as the supreme court itself, will be given notice in order that the new incumbent may present himself to take the oath and enter upon the discharge of his duties.

ART. 7. The person thus elected shall take his oath in the presence of the chamber of deputies, and when that shall be adjourned then in the presence of the senate. Should both houses happen to be in vacation the permanent deputation shall be the proper body for that purpose. The form of the oath shall be: "Do you swear in the presence of God our Lord to keep and enforce the constitutional laws, to administer well and zealously, and to discharge scrupulously all the duties of your office? If you do this, may God reward you; if not, then may He call you to account."

ART. 9. The magistrates of this supreme court of justice can not be sued civilly or criminally in any other manner nor before any other tribunal than that created and established by the second and third constitutional laws.

ART. 8. In cases where a deputy, senator, or councilor shall be elected to the judgeship, or to the position of public procurator of this supreme court of justice, he must give preference to those offices first mentioned.

ART. 10. The President, at a meeting of the cabinet and council, the senate, and the supreme high court of justice shall, each one, on the first six days of January, every two years, make a list of nine resident citizens of the capital, who shall possess the same qualifications as are required for magistrates of the supreme court. This shall be done in order to elect nine suppletory judges thereof, whose duty shall be to act during the absence of proprietary judges.

ART. 11. The said lists thus formed will be at once passed to the chamber of deputies, who will proceed to select from the same nine persons; and those so selected by the chamber of deputies shall be the suppletory judges of the supreme high court.

ART. 12. The powers of the supreme court of justice shall be: I. To try all civil or criminal actions that shall be brought against any of the supreme conservators in the manner stated by article eighteen of the second constitutional law. II. To try all criminal actions brought against the President of the Republic, and against the deputies, senators, and ministers of the cabinet, councilors, and governors of the departments, conforming in the same to what provisions are contained in the third constitutional law. III. To try in the first instance all civil actions where the President of the Republic or the ministers of the cabinet



are defendants or plaintiffs. So, in suits of the same character, 455 where deputies, senators, or councilors are made defendants. IV. To try in the third instance all suits brought against the governors and superior judges of the departments, as well as all criminal actions brought against these same individuals for common crimes. V. To settle all disputes as to jurisdiction of matters that may arise between tribunals of different departments, or between tribunals of different creation and prerogatives. VI. To try all disputes arising upon contracts and agreements entered into by the Government or by the express order of the Government. VII. To try all matters of official liability incurred into by the judges of the superior departmental courts. VIII. To have both original and appellate jurisdiction, and jurisdiction in the last resort of all criminal matters relative to diplomatic envoys and consuls of the Republic, as also of such civil suits where these parties are made defendants. IX. To try all admiralty cases and cases of prizes captured on land and on the sea; also to try crimes committed on the high seas and injuries to the Mexican nation; and this shall be done in the manner and form to be prescribed by a law relating to that matter. X. To try all criminal actions that may be brought against subalterns of the said supreme court of justice, either for excesses or abuses committed in their official capacity. XI. To try all such recourses had to it, seeking the annulling of a sentence given in the last instance by the courts of last resort in the departments. XII. To try all such recourses had to it as seek protection against the enforcement of decrees rendered by the very reverend archbishops and bishops of the Republic. XIII. To propose laws to Congress for their passage when the same have reference to the administration of justice according to what has been provided in the third constitutional law; and more especially to propose such laws as tend to the systematizing of the courts of the nation. XIV. To give its opinion in the case of laws proposed by the Supreme Government, or by the deputies when such laws have reference to the administration of justice. XV. To pass upon all doubts occurring to other tribunals and courts, with regard to the construction of any given law; and if it should find the said doubts to be well founded, then it shall pass them to the chamber of deputies, together with its own opinion in the matter, asking of that body to give the proper explanation. XVI. To appoint all inferior officers and employés of the said supreme court. XVII. To appoint the judges and procurators of the superior courts of the departments in the following manner: The superior courts of the departments shall each one make a list of the aspirants to said offices, as well as of all others whom they consider worthy of the honor. They shall then send that list to the governor, and he, in union with the departmental assembly, shall proceed to examine and exclude from said list such persons as, in his opinion, do not deserve the public faith of the department. That done, the list will again be sent back to the superior courts, and these shall again make a list of the persons remaining; and adding to each name a detailed account of the merits and qualifications of each one, they shall pass the same to the Government. The government in turn may also, with the advice of the council, strike from the list such names as, in his opinion, do not deserve the confidence of the nation; and that done, he will send the remaining names to the supreme high court of justice, who will proceed to make therefrom the appointments for judges and public procurators. XVIII. To confirm

the appointments of proprietary judges of the first instance made by the superior courts of the departments. XIX. To favor or oppose the petitions for pardon that may be presented in favor of convicted persons. XX. To try all matters in dispute that bear upon questions of the national patronage. XXI. To deliberate upon the granting or denial of permission to the enforcement of Papal bulls, briefs, and rescripts, bearing upon matters pending in the courts. XXII. To hear and determine such petitions as come up in the capital for the appropriation of private property as stated in Paragraph III of article 2 in the first constitutional law.

ART. 13. The supreme high court of justice, by associating to 456 generals of the army, shall constitute itself into a court-martial to try all matters and cases coming up under the military law as shall be provided by a law to be passed upon the following basis: I. In the said court-martial only the military judges will pass upon criminal matters of a purely military character. II. In civil matters only the civil judges will try and decide. III. In common criminal cases and in cases of a mixed nature they will all join in the trial, as well as in trials of general commanders for transgressions committed by them in their official capacity.

ART. 14. In this court-martial there shall be seven proprietary military judges, and one public procurator, also four suppletory, said judges to fill vacancies, and one suppletory procurator. The election of all of them shall be as for judges of the supreme court, and like them they shall enjoy the prerogatives stated in article ninth. Their qualifications shall be those contained in paragraphs 1, 2, 3, and 4 of article number four of this law; and besides, they must be also generals of divisions or brigadiers-general.

ART. 15. The conditions that must attach to them in order to be eligible to any other Government offices, besides that of their incumbency, must be as prescribed in Paragraph IV of article 16 of this law; that is to say, in order to habilitate these justices of the supreme high court of justice for any commissions that the Government may entrust to them.

ART. 16. The limitations placed upon this supreme high court of justice and its officers are the following: I. It shall have no power to make regulations, even though they relate to the administration of justice, nor to dictate any measures containing general provisions that alter or are declaratory of the laws. II. They shall not have power to try national questions that are purely gubernative and economic. III. Neither shall they have power to try such matters in dispute as are pending in the courts of the departments, or that belong to the territorial jurisdiction of the same. IV. Neither the judges nor the public procurators of the supreme court can accept any Government commissions whatever. When the Government, for reasons that involve the welfare of the public, should deem it proper to appoint an officer of this court as minister of the cabinet, or diplomatic envoy, or to entrust him with any other commission of that sort, it may do so with the advice of the council and with the consent of the Senate. V. The judges and the public procurators of the supreme court can not act as attorneys at law in suits, nor can they act as appraisers, arbiters, or referees.

ART. 17. The supreme court of justice has power to make rules for its own internal government and for the exercise of its powers. It can put them in operation immediately, and send them afterwards to Congress for changes or approval.

## THE SUPERIOR COURTS OF THE DEPARTMENT.

ART. 18. There shall be capital of every department a superior court, organized as shall be set out in the proper law.

ART. 19. Every one of these tribunals shall be equal so far as their vested powers shall go, and they shall be independent of each other in the exercise of their prerogatives.

ART. 20. The qualifications for the judgeships of said courts are: I. To be a Mexican by birth, or to come under the conditions of article four, paragraph 2, of this law. II. To be a citizen with the enjoyment of his rights. III. To be at least thirty years of age. IV. Never to have been legally convicted of any crime. V. To be a lawyer, and to have been engaged in the practice of that profession at least six years.

ART. 21. The superior judges and public procurators of these courts on coming into office shall take the oath prescribed in article seven in the presence of the governor and the departmental assembly.

457 ART. 22. The powers of these tribunals are as follows: I. To try in the second and third instance all civil and criminal causes that arise in their exclusive territory, and to try in the first and second instance all civil causes to which the governors of the neighboring departments are parties, and also all civil and criminal actions for common crimes in which the superior judges of the said neighboring departments are parties. II. To try in the first and second instance all criminal actions for common crimes; also all cases of official liability and civil suits in which the inferior judges within their jurisdiction are defendants. Likewise as to all actions brought against the subordinate employees of the court, for excesses or abuses committed by them in their official capacity; also to try in the third instance like causes against subordinate employees taken to it from the neighboring departments. III. To try all recourses had to it that seek the annulling of sentences rendered by the judges of the first instance when the trial of the case was in writing and no appeal did lie; also try like recourses in the case of oral trials in which an executory judgment was rendered. IV. To settle all jurisdictional disputes that may arise between inferior judges of its territory. V. To try all recourses had to it for protection against judgments rendered by ecclesiastical judges in their territory, provided the said judges are not archbishops or bishops. VI. To determine in what cases is the opinion of the ecclesiastical authorities to be consulted clergyable criminals. VII. To qualify the lawyers who are to fill as suppletories such vacancies as may occur in said courts; and this shall be done concurrently with their respective governors and departmental assemblies in the terms prescribed in Paragraph XVII of article 12 of this law. VIII. To appoint all the judges of the first instance within their jurisdiction; but this shall be by the concurrent act of the governor and the departmental assembly. Said concurrent act shall be as prescribed in the first part of Paragraph XVII of article 12 of this law. They shall report the same at once to the supreme court for its corresponding approval of said appointments. IX. To appoint all its necessary subordinate employees and inferior officers.

ART. 23. The limitations placed on these tribunals are the following: I. They shall have no power to make any regulations, even though they should have reference to the administration of justice, nor to dictate any

measures whatever containing general provisions that alter or are declaratory of the laws. II. They shall have no authority to try in their departments matters of a purely economic or gubernative character.

ART. 24. Neither the judges nor the public procurators of these courts of the departments shall act as attorneys in lawsuits, nor as appraisers, arbiters, or referees, nor can they accept any Government commissions within the territory of their jurisdiction.

#### OF INFERIOR COURTS OF THE FIRST INSTANCE.

ART. 25. At the head towns of the districts in the departments there shall be established the proper inferior judges and courts for the transaction of all civil and criminal matters that may arise in the first instance. Likewise at the head towns of such partidos as the departmental assemblies may determine, concurrently with the governor, provided the said partidos shall have a population of at least twenty thousand people.

ART. 26. The conditions for the judgeship in the courts of the first instance are: I. To be a Mexican by birth or to fall within any of the cases stated in Paragraph II of article 4 of this law. II. To be a citizen in the enjoyment of his rights. III. Never to have been convicted by process of law of any crime. IV. To be at least twenty-six years of age. V. To be a lawyer and to have been engaged in the practice of that profession at least four years.

458 ART. 27. The judges of the first instance can not appear as attorneys in lawsuits, nor act as appraisers, arbiters, or referees.

ART. 28. They shall confine themselves to the trial of judicial matters.

ART. 29. With regard to said judicial matters, the *alcaldes* of the town shall have vested in them such power as shall be fixed by the laws.

#### GENERAL PROVISIONS TOUCHING THE ADMINISTRATION OF JUSTICE IN CIVIL AND CRIMINAL MATTERS.

ART. 30. There shall be no personal "fueros" except the military and ecclesiastical.

ART. 31. The judges and public procurators of the supreme court shall hold office for life, and they can not be suspended nor removed except as prescribed in the second and third constitutional laws.

ART. 32. Likewise shall the judges and magistrates of the first instance hold office for life, and they can not be removed except for just cause, duly proved and adjudicated in court.

ART. 34. There can be but three instances in the trial of causes, whatever the nature or the amount involved may be. A law shall fix the number of instances so to be had in the various cases according to their nature, subject-matter, and circumstances before a decree can be entered in the same.

ART. 33. The salary that these magistrates and judges shall receive will be afterwards fixed by law.

ART. 35. Those judges who have already sat in the trial of a case in one instance are barred from doing so again in another instance.

ART. 26. Bribery, corruption in office, and barratry make the judges who are guilty of the same liable in an action by any private individual or individuals.

ART. 37. In civil matters any omissions whatever to execute any of the essential pleadings in the formation of a case shall annul the whole matter and make the guilty judges personally liable. A law shall be passed fixing the pleadings that shall be considered essential in a case.

ART. 38. Like omissions in criminal actions shall make the judges that are guilty of the same liable.

ART. 39. All litigants have the option to adjust at any time all their civil and criminal actions for offenses purely personal by the medium of arbiters, whose sentence in the matter shall be executed according to the laws.

ART. 40. Prior to the institution of a suit, or civil or criminal cause, seeking to redress offenses purely personal, it is requisite that the litigants shall have sought to compromise the difficulty. These acts and proceedings shall all be regulated by the proper law, which shall also specify in what cases compromises are not permissible.

ART. 41. In the case of the written order of arrest signed by the judge, and which is mentioned in Paragraph I of article 2 in the first constitutional law, the contents thereof shall be made known to the party  
459 concerned, and he and all others are bound to obey, comply, and aid in the enforcement of the same. Any resistance offered or any contrivance to resist or impede arrest shall be a grievous offense and punishable accordingly.

ART. 42. In the case of resistance, or when the officer has reason to believe that the prisoner may escape, he may employ physical force.

ART. 43. In order to imprison anyone it shall be necessary: I. That there shall be a summary information from which it appears that an act has been done which, according to law, ought to be punished by the infliction of bodily punishment. II. That there shall be also sufficient indication or motion to believe that one certain person has committed the criminal act.

ART. 44. In order to proceed to the bare detention of a person, there must be a legal presumption or well-founded suspicion sufficiently strong to incline the judge to believe that the person in question has committed the crime. A law shall be passed punishing those judges that may choose to proceed summarily in the matter.

ART. 45. The property of a prisoner shall not be subject to attachment except for offenses that of themselves shall create pecuniary liability. And even in that case attachment shall be brought only on such property as shall be sufficient to cover the amount involved.

ART. 46. If during the trial of the case and from the evidence produced it shall appear that the prisoner is not guilty, he shall be set at liberty in the manner and form to be prescribed by law.

ART. 47. Within three days after the said imprisonment or detention, the preliminary statement of the supposed criminal shall be taken. In the course of this proceeding he shall be informed of the crime with which he is charged and of the name of his accuser if there be any. Both this preliminary statement, as well as all others that may arise in the trial of the case, the prisoner shall not be required to verify so far as they relate to himself.

ART. 48. During the arraignment and at the time of formally presenting the accusation in court, the prisoner shall be made acquainted with

the contents of all writs in the case, as well as with the witnesses and everything that shall be marshalled against him. From this time on the trial shall proceed in the presence of the prisoner.

ART. 49. Never shall torture be employed to elicit confessions in the investigation of any matter, whatever its character may be.

ART. 50. Neither shall the penalty of forfeiture of property be imposed.

ART. 51. All penalties like the offense to which they attach are the personal concomitants of the culprit and they shall not taint his family.

**SIXTH LAW.**—*Division of the territory of the Republic and internal government of its towns.*

ART. 1. The Republic shall be divided into departments according to the eighth law of the organic bases. The departments shall be divided into districts, and the districts into partidos.

ART. 2. The divisions into departments shall be made by the first constitutional Congress during the months of April, May, and June of the second year of its sessions; and it shall do so by a law that shall be a constitutional one.

ART. 3. During the remaining portions of that same year the departmental assemblies shall divide their own departments into districts, and the districts into partidos. They shall report the same to the Government, and the Government shall then report to Congress for approval of the same.

Until the divisions stated in the two foregoing articles shall be made, the territory of the Republic shall be temporarily divided by a secondary law.

ART. 4. The internal government of the departments shall be vested in a governor, who shall be subject to the General Government.

ART. 5. The governors shall be appointed by the General Government from among three names that shall be proposed to it for that purpose by the departmental assemblies. In the case of the departments of the frontier, the Government shall not be required to make his appointment from among the three names presented, and in the case of other departments it shall have the right to return the same once only without making the appointment therefrom. The governor's office shall last eight years, and they may be reelected to the same office.

ART. 6. To be governor the requisites are: I. To be a Mexican by birth, or to have been born in any portion of America that, up to 1810, was subject to Spain, but that has since become independent; provided the person in question lived in the Republic at the time of achieving its independence. II. To be a citizen in the enjoyment of his rights. III. To be a native or inhabitant of the department for which he is proposed. IV. To be at least thirty years of age. V. To possess a capital, material or moral, yielding a yearly income of not less than \$2,000. VI. To be a layman.

ART. 7. The powers of the governors are: I. To watch over public order in the home matters of the department. II. To have at his disposal the armed forces that the laws empower him to have for that purpose. III. To keep and enforce the decrees and orders of the General Government, and the acts passed by the departmental assemblies, which



acts shall have the approval of the general Congress in the cases where that is required as per this law. IV. To send to the General Government, together with its own report thereon, all acts passed by the departmental assemblies. V. To appoint the prefects; to approve the appointments of the subprefects of the departments; to confirm the appointment of the justices of the peace; and to remove from office any of these officials, having previously consulted the opinion of the departmental assemblies touching the said removal. VI. To appoint the employees of the department; that is, when their appointment is not expressly reserved to any other authority. VII. To suspend the employees of the department even for three months and to deprive them of one-half of their salaries. VIII. To suspend the municipal councils of the department, with the advice of the departmental. In cases where the governors make use of the last two powers vested in them, they shall immediately report to the General Government that it may determine what it deems best in the matter of suspension. IX. To settle all doubts arising in the municipal elections, and to accept or not, as he may choose, the resignations tendered by the municipal councils. X. To exercise in common with the departmental assembly, and with the right to vote in case of a tie, that power of exclusion mentioned in Paragraph XVII of article 12, and paragraph eighth of article 22 of the fifth constitutional law. XI. To urge the courts and judges to a prompt and upright administration of justice and reporting all omissions to do so to the proper superior authorities. XII. To have the supervision of the offices of finance in the department and in the term to be prescribed by law.

ART. 8. During the temporary absence of the governor an acting governor shall be appointed in the same manner as the proprietary one; and he must possess the same qualifications as the latter. If the absence should be of short duration, the oldest member of the departmental assembly shall take charge of the government. This last person named shall also take charge of the government from the time the said absence begins until the acting governor shall be appointed and duly installed.

ART. 9. There shall be an assembly in each department, to be called the departmental assembly, and it shall be composed of seven members.

ART. 10. Said members shall be elected by the same electors who elect the deputies to Congress. The elections for the assembly shall take place precisely one day after the election of deputies. There shall be elected also seven supplementary members in the same manner as the proprietary ones.

ART. 11. The assemblies that retire shall qualify the elections of the new ones as they come in, and they shall do this with the governor's advice, and subject to what the senate may determine. Said assemblies shall report at once to the senate, but this shall not hinder the new ones coming into office from assuming possession of the same.

ART. 14. The departmental assemblies have the right: I. To propose laws relative to taxes, public instruction, trades, commerce, municipal government, and amendments to the constitution, as provided in article 26 of the third constitutional law. II. To prepare and present their opinion as is required by article twenty-eight of the same law. III. To establish primary schools in all the towns of the department, endowing them sufficiently from the common municipal fund whenever there may be such;

and when there is no such fund they can levy moderate taxes for the purpose. IV. To open up and improve the internal roads of the department, establishing moderate tolls in order to defray expenses. V. To determine upon such measures as may tend to the preservation and betterment of educational institutions, and institutions of public charity, as also all those that foster agriculture, commerce, and the trades. But if they should in any manner be burdensome to the people of the department the said measures shall not be carried into effect until they shall have been previously approved by Congress. VI. To promote, through the agency of the governor, whatever may subserve the prosperity of the department in all its branches, as well as the welfare of the inhabitants. VII. To make, with the governor's aid, all the municipal ordinances of the municipal councils, and also the police regulations of the department. These said ordinances and like measures as they may dictate in pursuance of paragraphs three and four, as well as those under paragraph 5, do not require a previous approval, may be at once set in operation, but subject, nevertheless, to what Congress may afterward determine. VIII. To examine and approve the accounts rendered to them of the collection and expenditure of the municipal funds. IX. To consult the Government in all matters where the government may so require. X. To ask the supreme conservative power to declare when shall the President be in the obligations of changing the ministers of his cabinet for the good of the nation. XI. To elect the President of the Republic, the supreme conservators, senators, and magistrates of the supreme high court of justice and of the court-martial, in the manner provided by the constitutional laws that bear upon that subject. XII. To propose three names to the General Government, out of which shall be chosen the governor for the department. XIII. To make use of the right of exclusion mentioned in articles 12 and 22 of the fifth constitutional law, in the matter of the appointment of magistrates and judges. XIV. To make and annually send to the Government the statistics of their department, adding thereto such remarks as they may deem conducive of the welfare and progress of the department.

ART. 15. The following are the restrictions placed upon the governors and departmental assemblies: I. Neither under the pretext of exercising police powers for taxing can they levy contributions in any other manner than that prescribed in this law, nor can they appropriate the same to other uses than those to which they belong. II. They can take no steps to raise troops, except in the case where they are empowered by law to do so and when they are ordered to do so by the General Government. III. They shall exercise no other authority but that vested in them by this law. Any act of theirs whatever that shall be contrary to this paragraph of this article, and also to the two preceding paragraphs, shall make them seriously liable. IV. The members of the departmental assemblies can not resign their office unless for lawful cause, to be declared sufficient by the assembly itself with the advice of the governor.

ART. 16. At the head town of each district there shall be a prefect appointed by the governor and confirmed by the General Government. His office shall last four years, and he may be reelected to the same office.

462 ART. 17. To be a prefect it is necessary: I. To be a Mexican citizen in the enjoyments of his rights. II. To be a native or

inhabitant of the department. III. To be not less than thirty years of age. IV. To possess a capital, material or moral, that shall yield an income of at least one thousand dollars yearly.

ART. 18. The duties of the prefects are: I. To keep guard in their district over public order and tranquillity, but subject in all things to the Government. II. To keep and enforce the orders of the government of the department. III. To see that the municipal councils do their duty, and in general to keep watch over all matters of police.

ART. 19. At the head town of each partido there shall be subprefect appointed by the prefect and approved by the governor. His office shall last two years, and he may be reelected to the same.

ART. 20. In order to be a subprefect the conditions are: I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the head town of the partido. III. To be at least twenty-five years of age. IV. To possess a capital, material or moral, that yields an income of at least five hundred dollars yearly.

ART. 21. The powers of the subprefect for the partido are the same as those of prefect for the district; but subject to him and, through him, to the governor.

ART. 22. There shall be municipal councilors (ayuntamientos) in the capital cities of the departments, in the towns where they existed in the year 1808, in the seaports whose population shall reach up to four thousand people, and in towns that have eight thousand people. In places that do not have that number of people, there shall be justices of the peace, who shall also be the custodians of the police. There shall be as many of them as the departmental assemblies, with the governor's advice, shall see fit to determine.

ART. 23. The members of the municipal council shall be elected by popular electors in a manner that a law on that subject shall prescribe. The number of alcaldes, aldermen, and procurators will be fixed by the departmental assemblies, with the governor's advice. The number of alcaldes, however, shall not be more than six in each place. The aldermen shall not exceed twelve nor the procurators two.

ART. 24. In order to be a member of the municipal council it is necessary: I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the town. III. To be not less than twenty-five years of age. IV. To possess a capital, material or intellectual, that shall yield an income of at least five hundred dollars yearly.

ART. 25. The following shall be the duties of the municipal councils: To watch over the health and comfort of the public; to have the control of jails, hospitals, and institutions of charity, if they be not private concerns, and also to supervise the school of primary education that are maintained out of the public funds. So as to buildings and repairing bridges, causeways, and roads; to promote the betterment of agriculture, of commerce, and the trades, and to aid the alcaldes (mayors) in preserving public order and tranquillity. But in all these things the municipal councils shall be controlled by the provisions of the laws and regulations.

ART. 26. The following matters shall be of the charge of the alcaldes, namely: To act as peacemakers in the town, to hear and determine verbal litigations, and to dictate such measures as are absolutely necessary, with regard to matters in dispute that can not be safely delayed in order to

bring them to the cognizance of the judges of the first instance; to hold the preliminary hearing of criminal matters that likewise can not be safely delayed, and to do whatever else may be entrusted to them by the proper courts or judges; also to preserve public order and tranquillity. Subject in all, however, to the subprefects, and through them to the other superior authorities.

ART. 27. The justices of the peace, who shall also be keepers of the police, shall be proposed by the subprefects, appointed by the pre-  
463 fects, and confirmed in the appointment by the governor. Their office shall last one year, and they can be reelected to the same.

ART. 28. In order to be a justice of the peace the requisites are: I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the town. III. To be not less than twenty-five years of age.

ART. 29. These justices of the peace shall exercise within their proper towns those same powers that are given to alcaldes and to municipal councils, but subject, nevertheless, to the subprefects and through them to the other superior authorities. In places that fall short of one thousand people the powers of the justices of the peace shall be confined to preserve public tranquillity, to be the custodians of the police, and to have all such judicial proceedings in criminal and civil matters that on account of the exigence of the occasion can not be delayed until taken to the nearest proper authorities.

ART. 30. The offices of subprefects, alcaldes, justices of the peace that are also the controllers of the police, aldermen, and municipal procurators are municipal popular officers and can not be resigned except for lawful cause that shall appear sufficient in the eyes of the governor; or again to be resigned only in case of reelection to the same position.

ART. 31. A secondary law shall be passed to minutely set up whatever shall have reference to the exercise of their powers and duties by these prefects, subprefects, justices of the peace, aldermen, and municipal procurators, as well as the manner of filling up vacancies that shall occur in their offices; also stating what shall be the salaries for the governors, members of the departmental assembly, and prefects, together with the privileges to which they shall be entitled.

#### *Sixth law.—Amendments to the constitutional laws.*

ART. 1. There shall be no changes made in any of the articles of this constitution within the next six years from its passage.

ART. 2. In the case of amendments that shall be proposed after the six years have expired, paragraph 10 of article 12, of the second constitutional law; and paragraph 1 and 3 in article 26; article 28, 29, and 38, of the third constitutional law; and paragraph 2 of article 17 of the fourth constitutional law must be strictly complied with.

ART. 3. In the case of proposals to Congress that have reference to amendments of the constitution, as well as in proposals seeking to amend all other laws, the chamber of deputies shall have the right not only to amend the wording of the bill as projected, but also to add to or modify the same in order to have the law in the best shape possible.

ART. 4. Bills for amending the constitution that fall within article 38 of the third constitutional law shall be done subject to the provisions thereof.

ART. 5. The right to interpret the articles of the constitution when doubts occur shall belong exclusively to the general Congress.

ART. 6. On coming into office all public officials shall take an oath to keep and enforce the constitution as he may be called on to do so, and he shall be liable for breaches that he may commit, or which he shall not impede.

#### TRANSIENT ARTICLES.

ART. 1. On the following day after that for which Congress calls  
464 for an election of deputies, the election for members to the departmental assembly shall be held, which said election in places where there shall be no retiring assembly shall be duly qualified by the municipal council of the capital, subject, nevertheless, to what the Senate may afterwards determine.

ART. 2. Congress shall fix the days for the holding of the elections mentioned in article 8 of the third constitutional law, and article 2 of the first constitutional law. The Government shall fix the dates for the holding of those stated in paragraphs 1, 2, and 3 of the second constitutional law.

ART. 3. On this occasion there shall be a committee of nineteen representatives appointed by Congress by plurality of votes to discharge those electoral functions that should be discharged by the chamber of deputies alone, as per paragraph 6, article 3, of the second constitutional law, and paragraph 1 of article 2 of the third constitutional law; also those that belonged only to the Senate as per the fourth constitutional law, and articles 5, 10, 11, and 14 of the fifth constitutional law.

ART. 4. The whole of Congress shall discharge the electoral functions that by paragraph 6 of article 3 of the second constitutional law belong to the Senate alone. Also those that belong to the supreme executive power, as per paragraphs 3, 4, and 8 of the third constitutional law, and those that belong solely to the chamber of deputies, as per article 2 of the fourth constitutional law, and articles 5, 10, 11, and 14 of the fifth constitutional law.

ART. 5. The appointment mentioned in article 12, paragraph 12, of the second constitutional law shall on this occasion be made by the supreme conservative power in the course of the first month of its installment in office. And on the same day it shall hold the election for chairman and secretary, as stated in article 20 of the second constitutional law.

ART. 6. The first constitutional Congress shall open its sessions on the day that shall be stated in the call for elections to the same, and its sessions of the first part of the year shall terminate on the 30th day of June, 1837.

ART. 7. While organizing the superior courts of the departments, for the present those judges that are the actual incumbents thereof shall be respected in their offices upon such conditions as shall be prescribed by a law on that subject. The said law shall also state the manner in which they are to be elected to the said positions, following as far as possible the provisions of this constitution.

ART. 8. The terms of office as fixed for each one of the public officials by the terms of these constitutional laws shall begin to run on the first day of Jan., 1837, whatever may be the day on which they come into the possession of the office.

465 Mr. REYNOLDS. I also offer in evidence law of Congress of December 30th, 1836 (see Mexican Statutes at Large, vol. 3, page 258), which, in compliance with the constitution of 1836, divides the territory of Mexico into departments, which said law is as follows:

"Number 1807. December 30, 1836. Law dividing the Mexican territory into departments.

"ART. 1. The Mexican territory is divided int' as many departments as there were States, with such modifications as following:

"ART. 2. That which was the State of Soahuila and Texas is divided into two departments, each one to consist of its own proper demarcations. New Mexico shall be a department. Upper and Lower California shall be a department. Aguascalientes shall be a department comprising the territory it embraces at present. The territory of Colima is added to the department of Michoacan. The territory of Flaxcala is added to the department of Mexico. The capital of the department of Mexico is the city of that name.

"ART. 3. The governor and departmental assembly of Coahuila shall exercise their authority only within the department of that name.

"ART. 4. When peace and order shall have be'n restored in the department of Texas the Government will take such measures as may be necessary to organize the authorities there, and it shall fix the capital thereof wherever it may deem it best.

"ART. 5. In the department of the Californias the Government shall name the capital of the same until the constitutional elections shall be held.

"ART. 6. The departmental assemblies shall temporarily divide their respective departments into districts and these into partidos; prefects and subprefects will also be appointed, as well as municipal councils and justices of the peace, as provided by the constitutional laws.

"ART. 7. The tribunals of the first instance shall be temporarily organized, subject to the conditions of article twenty-seventh of the fifth constitutional law."

Mr. REYNOLDS. I now offer in evidence the law of January 17, 1837 (see Mexican Statutes at Large, vol. 3, page 260), which creat's a national bank and authorizes and creates a mortgage to that bank of all the  
466 lands of the nation and in all the territory of the Republic for the purpose of securing and finally discharging the debt therein named and provided for, which said law is as follows:

"Number 1811. Jan. 17, 1837. Bases for the creation of a national bank for the extinction of the copper money. The coinage of copper money is ordered to cease, and other provisions are given relative to money other than gold or silver money.

"ART. 1. The coinage of money other than gold or silver money shall cease immediately in all the mints of the Republic, and enever again shall it be resumed without an express order fr'm Congress, which order from Congress shall determine its weight, as well as the amount to be struck. The Government shall at once see that the molds that were exclusively used for coinage of this kind of money shall be condemned and rendered unavailable for further use.

"ART. 2. The Government shall at once create and regulate a national bank, for the purpose principally of extinguishing the copper money; and



the government of said bank shall be entrusted to persons chosen from among the several classes of society in such terms as the said regulations will provide, which persons have no other duty to the Government than to render to it an annual statement of the accounts under their management.

"ART. 3. The following are declared to be the funds of the bank for the proposed extinction of the copper coin, namely: I. All the real estate of the nation that lies within the territory of the Republic. II. All assets of the public treasury due up to the year 1836, whatever their nature or place of location, with the exception of maritime duties. And in order to collect the said assets the bank shall have the right to enter into such transaction and to make discounts on the same as it may deem proper. III. The receipts from the taxes on tobacco, that shall again be brought back to the license system in all of the Republic, except in the department of Yucatan. IV. The receipts for the whole of this year of the farm and city taxes, and of licenses in the departments of Mexico (the capital excepted), Puebla, Guanajuato, Michoacan, and Jalisco, which receipts shall be collected by the bank and restored by it to the Government whenever the other branches of its funds shall permit. V. The new coin that shall be struck to replace the actual one (the amount of which shall be what Congress shall determine upon hearing the opinion of the bank), and all the metal and utensils that shall be rendered worthless on account of the abolition of the copper money, and on account of the melting of that already collected and extinguished; provided the persons that sold the same made no stipulation to the effect that the metal should be returned to them. VI. The amount of all pecuniary fines imposed by law

467 on counterfeiters of money, that may be actually levied. VII. All deposits of money that it shall take at interest. VIII. The small premium established for directly exchanging the actual coin for money of the new coin or for silver. IX. And whatever shall accrue to the Government from the negotiations of the Fresnillo mines. X. And finally all import duties on goods that the Government may see fit to impose; provided they are not contributions or burdens on the public.

"ART. 4. The bank shall manage its own funds totally and independently of the Government, subject to the rules that shall be prescribed in the proper regulation of the matter. The president of the board of directors shall be appointed by Congress.

"ART. 5. This bank shall have no power to issue bank notes without the express authorization by Congress, except those necessary for the extinction of the copper money in circulation; it will also issue bills of credit for the amount of the monies deposited with it at interest, and it may allow on the same as much as 18 per cent per annum proportionately as the number of months may be that the holders thereof shall delay in presenting the same for payment.

"ART. 6. The bank is authorized to negotiate a foreign loan of money to the amount of forty millions of dollars upon the security of the funds assigns to it, seeking after the greatest advantage to be derived from the same.

"ART. 7. When the bank shall have been duly installed in the possession of all the funds now assigned to it, and when its branch offices shall have been duly organized (which the Government will see that it be done at the earliest possible date), the public will be duly notified, so that

the possessors of the actual copper money, who may desire of their own free will to have the same exchanged, may be able to take the same to such places as may be determined beforehand, where they shall have it exchanged for silver or for copper money of the new coin, or for bank notes of this bank, or premiseously for all of these three species of currency, as those tend'ing the same may desire and as the funds in the bank may permit. If the exchange shall be for silver money or for copper money of the new coin, these parties shall have the same exchanged at the small discount that the Government may fix, but which shall not exceed four or six per cent. And if the exchange shall be for bank notes no such discount shall be made; on the contrary, the established interest on the same shall begin to run.

"ART. 8. The bank shall cause all the copper money coming into its possession to be melted, saving such as may be absolutely necessary for its expenses and liabilities; but even this shall not be put again in circulation before having the same recoined once more; and the expression on its face shall specify that the value of the same is but one-sixteenth of a real for each cuartilla.

468 "ART. 9. There is no change made in the nominal value of the present copper money, and it may be taken in ad valorem in all the offices of the public finance for the amounts paid in and according to the provisions of the laws in force until now.

"ART. 10. No person or authority, not even the supreme ones, shall have power to dispose of the bank funds for any other purpose than that for which they are created. Any act in derogation of this stipulation is now declared to be an offense against private property redressible by private action; it will also create a grave liability and indemnity shall be sought by levying upon the offender's goods.

"ART. 11. The Government shall detail these bases in a formal decree that shall be issued by it at the earliest date possible."

Mr. REYNOLDS. I also offer in evidence the decree of the Supreme Government of January 20th, 1837, carrying into execution the law above named and providing the manner of carrying on the national bank and requiring the governors and officers of the several departments to turn over to the bank all funds and properties pledged to it by the mortgage. This decree sets out no new matter; it gives out in detail the contents of the law, January 17th, 1837 (*supra*).

Art. 22 stipulates "that the bank shall take the funds assigned to it subject to all existing incumbrances," and article 28 of the same reads as follows: "The governors of the departments and the general offices shall, as soon as this decree comes to them, see that the offices now in charge of those funds that by law are assigned to the bank, proceed to balance the accounts relative to the said funds and to send a copy of the statement to the minister of finance, another to the Government, or to the respective general office, its superior, and another to the board of directors to the said bank at the said time, all properties and revenues and employees of the same, together with the regulations and instructions relating to those matters."

Mr. REYNOLDS. This regulation is decreed under that provision of the law of January 17th, 1837, cited, which reads: "ARTICLE 11. The Government shall detail these bases in a formal decree, *ect.*"

I also refer the court, for the purpose of showing the recognition of the existence of the department at all times from the adoption of the constitution of 1836 up to and after the date at which it is claimed the grant in this case was made, the following laws and circulars :

The law of March 20th, 1837 (see Statutes at Large of Mexico, vol. 3, page 323), which provides for the internal government of the departments.

I offer in evidence the law of April 4, 1837 (see Mexican Statutes at Large, vol. 3, page 352), which authorizes the Government to colonize the lands of the Republic and repeals all prior colonization laws :

469 "Number 1847. April 4, 1837. Law. To colonize the lands that are and ought to be the property of the Republic. All other laws on colonization are repealed so far as repugnant to this act.

"The Government, with the advice of the council, shall proceed to colonize the lands that are or ought to be the property of the Republic; and this shall be done by means of sales *enphytensis* or mortgages, applying the receipts thereof (which in the case of sales shall not be less than ten reals per acre) to the payment of the national debt existing or to be contracted; but always reserving a sufficient land to comply with what was promised to the soldiers that fought for the independence and for such rewards and concessions as Congress may decree to Indian tribes and nations, and to those who have taken part in quelling the revolt in Texas; the Government in doing that shall not be bound by the colonization laws passed prior to this one, and all parts of the same that are contrary to this stand repealed, and the prohibition contained in article 11 of the law of April 6th, 1830, is again repeated here.

Mr. REYNOLDS. I also offer in evidence the decree of April 17, 1837, by which all departmental revenues are secured to the General Government, recognizing, however, the right of the national bank to the property conveyed to it by the mortgage of January 17th, 1837.

"Number 1855. April 17, 1837. Decree of the Supreme Government. Of the revenues that for the present constitute the national exchequer: direction, management, and distribution of the same. Creation of the superior chiefs of finance and of the collecting and disbursing officers.

"ART. 1. Until the general Congress shall establish what the revenues of the national treasury shall be, the same will consist of those revenues, contributions, and properties of which the Government is in possession, as also of those revenues, contributions, and properties that were established and acquired by the departments under the federal system, and which were already in existence when the decree of the 3rd of October of 1835 was established.

"ART. 2. The revenues, contributions, and properties that by law of the 17th of January last were assigned to the national bank are excepted from the operation of the foregoing article, until the object for which the bank was created shall be fulfilled.

"ART. 3. The direction, management, and distribution of the national exchequer shall be effected in the departments, beginning from the time when this decree shall be published, and under such officers as are mentioned in the same. Therefore the operation of the decree of the 9th of January, 1836, ceases, which decree prohibited any alterations to be made in the manner of collecting and disbursing the revenues of the departments.

“ART. 4. There shall be created in every one of the departments superior chiefs of finance, with such powers as shall be given to them  
470 in this decree. All other employees of the public exchequer shall be subordinate to them in their respective districts in such cases and in such manner as shall be prescribed hereinafter.

“ART. 5. The administration and management of the public funds is divided between collecting offices and disbursing offices. The first shall collect such taxes as constitute the public exchequer, and watch over the preservation, increase, and collection of the proceeds of said taxes. The second shall have charge of the expenditure of the said national funds among the several branches of public government. The former will be called revenue administrations and the latter departmental treasuries.

“ART. 73. All sales and purchases made for the benefit of the public exchequer, and which shall be for not less than five hundred dollars, shall, unfailling, have to be so made at auction sale meetings (*juntas de almoneda*), at the capitols of the departments of the following persons, to wit: The supreme chief of finance, the departmental treasurer, the fiscal procurator of the exchequer, the first *alcalde*, and the auditor of the treasury, which last-named person will also act as secretary of the meeting. The proceedings held at these meetings shall be recorded in a book for that purpose, and subscribed to by all the members. A copy thereof will be sent to the superior chief of finance for such ends as may be proper, and in order that he may account thereby to the Supreme Government.

“ART. 74. The supreme chiefs of finance shall hold finance meetings (*juntas de hacienda*) at least twice every month and on such other dates as may be necessary to discuss matters of paramount importance. Said meetings shall be composed of the said chief of the departmental treasurer, the fiscal procurator of the exchequer, the chief revenue administrator, and the auditing officer of the treasury, which last-named person shall also act as the secretary of the meeting.

“ART. 75. The object of the finance meetings shall be to promote the increase and good success of the incomes belonging to the exchequer; as also the best and most expedient manner of collecting the same, and such matters of economy as shall be advisable touching their expenditure; likewise to expedite such grave and complicated matters as the superior chief shall present for their consideration, and to notify this last-named official of any bad management or behavior, nonfeasance, and such faults of that descriptions that they may notice in the person of the finance employees of the department.

“ART. 76. The proceedings of these meetings shall be recorded in the proper book to be kept for that purpose, and shall be subscribed to by all the members thereof; also an authorized copy thereof shall be sent to the superior chief of finance, so that he may thereby account to the Government when necessary.”

Mr. REYNOLDS. I also offer in evidence the law of December 7, 1837. (See Mexican Statutes at Large, volume 3, page 443, which requires the governors of the departments to preside at all sales of property, &c.)  
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“Number 1900. December 7, 1837. Law. Powers of the Government in the matter of finances. This law to be in force until the decree of the 17th of April last can be revised.

“ART. 1. Until the decree of the 17th of April last, issued by the Government, can be revised, and until the law shall pass by which shall be

settled in what manner are governors to exercise such power as is given to them by article 7th, paragraph twelfth, of the sixth constitutional law, they shall, in the exercise of said power: 1st. Be present at and authorize in person, in the capitals (and in other places of the department through the inferior political authorities thereof), the balance of the accounts made monthly and yearly by the chief officials of the offices of finance; likewise, to report to the Supreme Government at once any abuses or faults that they may notice. II. To preside at the juntas de almoneda, having the vested power to postpone further of these meetings until in the next one or two subsequent meetings the matter involved can be thoroughly discussed.

"ART. 2. In the exercise of the same faculty, the governors may: 1st. Be present at the inspection of bills of exchange in the cash vaults. II. Furnish the required consent that by right should be given by the general directory of the revenues, for the appointment of visitors and comptrollers; this, however, will not bar the superior chiefs from notifying the said office at once. III. Suspend, gubernatively, with such information as they may get from the superior chief, such inferior employees of the offices of finance, and such clerks thereof as fail to perform their duty or excite suspicion; and also they shall at once report the matter to the Supreme Government.

"ART. 3. The foregoing articles do not in any manner limit the powers of the governors as vested in them by article' 65 and 66 of the said decree of the Government; hence they may exercise the said powers even outside of the locality of their residence, and in such manner as prescribed by the first part of article 1st of this decree."

Mr. REYNOLDS. I also offer the circular of April 11th, 1838 (see Mexican Statutes at Large, volume 3, page 480, which refers to the departments).

I also refer the court to the law of April 17, 1838 (see Mexican Statutes, ), which refers to the respective departments.

I also refer the court to the circular of April 27, 1838 (see Mexican Statutes at Large, page 483, 3rd volume, which refers to the governors of the departments.)

I also offer in evidence the entire 3rd volume, Mexican Statutes at Large, as containing all laws and decrees passed or published from the date of the constitution of 1836, up to and after the 12th day of April, 1838, for the purpose of showing that no law or decree was passed or published modifying or changing the central character of the Government created by that constitution.

472 Here the defendant rests its case.

And be it further remembered, that afterwards, to wit., on the sixteenth (16) day of December, the same being the fifteenth (15) day of the regular December term, 1892, of this court, the following further proceedings were had, to wit:

ALGODONES LAND CO., PLAINTIFF,	}	Santa Fe, No. 47. Denver, No. 1.
vs.		
THE UNITED STATES, DEFENDANT.	}	

The above-entitled cause came on to be further heard. There appeared Matt. G. Reynolds, esq., U. S. atty., and Earl B. Coe, esq., A. M. Steven-





one hundred and eleven (111), one hundred and twelve (112), and twenty (20) lines on page one hundred and thirteen (113), journal book, Santa Fe, 1.

475 Which said decree is in the words and figures following, to wit :

In the United States court of private land claims, at Denver, Colorado.

EARL B. COE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT. }

*Decree.*

This cause having come on to be heard upon the petition of the petitioner, the answer of the respondent thereto and the proofs taken in said cause, and having been argued by E. M. Sanford, esq., A. M. Stevenson, esq., and S. L. Carpenter, esq., counsel for the petitioner, and by Matt. G. Reynolds, esq., United States attorney of this court, counsel for the respondent, and the court having duly considered the same and being well advised in the premises doth find:

That the land claimed by the petitioner and hereinafter described, is situate in the Territory of Arizona, in the United States of America, and the respondent acquired sovereignty thereto by virtue of a treaty concluded between the United States of America and the Republic of Mexico, at the City of Mexico, in said Republic, on the 30th day of December, A. D. 1853, and commonly known as the "Gadsden treaty."

476 That prior to the Government of the United States of America obtaining sovereignty over the territory included within the Gadsden treaty, or purchase, the land claimed by the petitioner and hereafter particularly described was situate within the State of Sonora, in the Republic of Mexico.

That on the 20th day of May, 1825, in pursuance of authority, the honorable constituent congress of the provisional government of the State of Sonora and Sinaloa passed law number 30, regulating the manner of selling or granting vacant lands within the State and providing a system of procedure therefor.

That on the 11th day of July, 1834, the honorable constituent congress of the State of Sonora passed law number 26, sections 3, 4, 5, 6, and 7 of chapter 9 of which law reenacted and enlarged the law of May 17th, 1825, before referred to, which said law of July 11th, 1834, provided a system of procedure for the selling or granting of the public lands within the State of Sonora, and also provided among other things, in substance and effect, that the treasurer-general of the State was authorized and empowered, under certain rules and regulations therein set forth, to make sales of vacant lands within the State to purchasers possessing the necessary means, and to issue title upon such sales.

That on the 17th day of April, 1837, the Supreme Government of the Mexican nation passed a law providing, among things, that all purchases and sales made on account of the public treasury, and which were in  
477 excess of \$500, must be made by an auction board, known as the junta de almoneda, consisting of certain of the officers of the State mentioned in said law and requiring that said board of junta de almoneda, or board of sale, should, in the event of a sale being made for a greater amount than \$500, report the same to the Supreme Government.

That on the 4th day of January, 1838, Don Fernando Rodriguez, a native Mexican citizen, residing in the city of Hermosilla, in said State of Sonora, then possessing the necessary qualification and necessary means, presented to Jose Justo Milla, then being auditor of the treasury and acting treasurer-general of the State of Sonora, a petition in due form of law, applying for the sale of certain of the vacant lands of the State, which lands are hereinafter particularly described.

That under and by virtue of said petition, laws, rules, and regulations such proceedings were thereafter duly and regularly had; that on the 10th day of April, 1838, at public auction, the Republic of Mexico, by the junta de almoneda (board of sale), and the State of Sonora, by Jose Justo Milla, auditor as aforesaid and acting treasurer-general of said State, duly and regularly sold the vacant lands claimed by the petitioner, and hereinafter particularly described, to Don Fernando Rodriguez, he being the highest bidder therefor, for the sum of \$400.00.

That afterwards, on the 12th day of April, 1838, the said Jose 478 Justo Milla, as such acting treasurer-general, then being duly authorized and empowered by law in the premises, duly and regularly executed and delivered to the said Don Fernando Rodriguez the testimonio or conveyance of title to the said vacant lands so as aforesaid sold to him, to wit, the Rancho El Paso de los Algodones, hereinafter more fully and particularly described.

That thereafter the sale of said lands to the said Don Fernando Rodriguez and the issuing of title thereto to him was approved by the Supreme Government of the nation, and the State of Sonora, acting by and through Leonardo Escalante, the then governor of said State.

That by the said testimonio or conveyance of title and the proceedings theretofore had relating to the sale and conveyance of said land, the title in fee simple to the said Rancho El Paso de los Algodones passed to the said Don Fernando Rodriguez, his heirs, children, and successors.

That all the laws, rules, requirements, and regulations relating to the sale of said vacant lands so sold as aforesaid, and hereinafter particularly described, were duly and regularly followed and complied with in the making of said sale and conveyance.

That the original record or matrix of the proceedings in making said sale and conveyance to the said Don Fernando Rodriguez are now, and 479 ever since the said 12th day of April, 1838, have been, on file

and of record in the official archives of the State of Sonora, in the Republic of Mexico, and that the same are in the Spanish language and are genuine.

That this action was originally commenced by The Algodones Land Company, a corporation duly organized and created under and by virtue of the laws of the Territory of Arizona; that since the commencement of the same, Earl B. Coe, the present petitioner, has for value succeeded to the rights and interests of the said The Algodones Land Company in and to the land hereinafter particularly described.

That the petitioner, Earl B. Coe, holds and possesses said Rancho El Paso de los Algodones, hereinafter more particularly and fully described, under and by virtue of sundry mesne conveyances from the said Don Fernando Rodriguez, his heirs, and assigns.

That the said lands embraced in the said Rancho El Paso de los Algodones, and hereinafter particularly described, are nonmineral in character.

That the said Earl B. Coe, petitioner, claims said Rancho El Paso de los Algodones, hereinafter particularly described, under a title from the Government of the Mexican nation, which said title was complete and perfect on the 30th day of December, A. D. 1853, the date when the United States acquired sovereignty to said territory.

That the title to the said Rancho El Paso de los Algodones is valid, and that the said petitioner, Earl B. Coe, has a good and lawful right thereto.

480 That the extent, location, and boundaries of said title and grant of sale of the Rancho El Paso de los Algodones are as hereinafter described.

That the issues joined upon the pleadings herein are found in favor of the petitioner and against the respondent, and that all of the material allegations contained in the petitioner's petition are true.

Wherefore, under and by virtue of law and the power vested in the United States court of private land claims, regularly sitting at Tucson, in the Territory of Arizona, by virtue of an act of Congress of the United States of America entitled "An act to establish a court of private land claims and to provide for the settlement of private claims in certain States and Territories," approved March 3rd, 1891, it now here, on the 24th day of February, 1893, in open court, by the court considered, ordered, adjudged, and decreed that the title of the petitioner, Earl B. Coe, be and the same is hereby wholly, fully, and finally adjudged valid and confirmed to all those certain pieces and parcels of land and premises located, lying, and being in the county of Yuma, in the Territory of Arizona, named, known, and described as follows, viz:

Five (5) square leagues of land, more or less, contiguous to the Colorado River, situated in front of the confluence of said river with the Gila River and opposite a point named El Paso de los Algodones and known as the Rancho El Paso de los Algodones grant, more particularly  
481 described as follows, to wit: Section one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-four (24), twenty-three (23), twenty-six (26), thirty-five (35), thirty-four (34), in township number ten (10) south, range twenty-five (25) west of the Gila and Salt River base and meridian; also sections four (4), five (5) and six (6), seven (7), eight (8), seventeen (17), eighteen (18) and nineteen (19), the northwest quarter of section three (3), the north one-half and southwest quarter of section nine (9), the west one-half of section twenty (20), the north one-half and southwest one-quarter of section thirty (30), and northwest one-quarter of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north one-half ( $\frac{1}{2}$ ) and

the southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section five (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also section six (6) and the northwest quarter ( $\frac{1}{4}$ ) of section five (5), and the north one-half ( $\frac{1}{2}$ ) and the southwest one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian; sections nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and the northwest quarter ( $\frac{1}{4}$ ) of section twenty-eight (28), in township eight (8) south, range twenty-three (23) west, Gila and Salt River base and meridian; also sections twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33), in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian; also that certain tract of land lying north of the San Bernardino base and meridian and west of the village of Yuma, and within the said county of Yuma, described as follows:

Commencing at the southeast corner section thirty-one (31), township ten (10) south, range twenty-four (24) west, thence ranging south to the international boundary line, thence west along said boundary line to the Colorado River, thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31), thence east along a westerly prolongation to the south line of said section to the southeast corner of said section and place of beginning, and intended to cover and describe all tracts of land not hereinbefore specifically mentioned as lying along and upon the left bank of the Colorado River, between the boundary line of the United States and the Republic of Mexico and the confluence of the Gila and Colorado rivers, and conveyed by said grant title, containing five (5) square leagues of land, more or less, save and except that portion of the above-described land and premises particularly described in a certain patent issued by the Government of the United States, conveying to the mayor of the village of Yuma, in trust for the use and benefit of the inhabitants of said village, the land in said patent described, which patent is now on file and of record in the office of the county recorder of the county of Yuma, in said Territory of Arizona.

Done in open court, this the 24th day of February, 1893.

JOSEPH R. REED,  
*Chief Justice.*

The parties to this action, by their respective attorneys, having agreed in open court that the decree entered herein may be entered at Santa Fe, New Mexico, as of this day, it is so ordered by the court.

Tucson, February 24, 1893.

JOSEPH R. REED,  
*Chief Justice.*

And be it further remembered, that afterwards, to wit, on the twenty-first (21) day of August, the same being the eighteenth day of the August term, A. D. 1893, the following proceedings were had, to wit:

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MONDAY, *August 21st*, 1893,

Court met this day at 10 o'clock a. m.

Present: Hon. Joseph R. Reed, chief justice; Hon. Thomas C. Fuller, associate justice; Hon. William W. Murray, associate justice; Hon. Wilbur F. Stone, associate justice.

Also present: Matt. G. Reynolds, esq., United States attorney, and the other officers of the court as on Friday, the 19th, 1893.

Absent: Hon. Henry C. Sluss, associate justice.

The following proceedings were had to wit:

EARL B. COE, PLAINTIFF,	} Paso de los Algodones land grant. No. 49.
vs.	
THE UNITED STATES, DEFENDANT.	

Now at this day Mr. Matt. G. Reynolds, U. S. attorney, presented an application for an appeal to the Supreme Court in the above-entitled cause, and the same was signed and allowed by the court.

485 UNITED STATES OF AMERICA, ss:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing four hundred and eighty-four (484) pages contain a full, true, and complete transcript of the records and files of the court of private land claims, of all proceedings had in a cause filed therein in which Earl B. Coe is plaintiff and the United States is defendant, for the confirmation of a certain private land claim, commonly known and designated as the "El Paso de los Algodones grant."

Witness my hand and the seal of said court at my office in Santa Fe, Territory of New Mexico, this the twenty-first (21) day of August, A. D. 1893.

[SEAL.]

JAMES H. REEDER,

*Clerk Court of Private Land Claims.*

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In the court of private land claims.

EARL B. COE, PLAINTIFF,	} No. 47.
vs.	
THE UNITED STATES, DEFENDANT.	

*Opinion of the court.*

This is a suit for the confirmation of an alleged grant of lands made in 1838 to one Don Fernando Rodriguez, through whom plaintiff claims by a claim of mesne conveyances. The documentary evidence introduced at the trial shows that on the 4th of January, 1838, said Rodriguez presented his petition to the treasurer-general of the State of Sonora for a grant of five square leagues of land at the confluence of the Colorado and Gila rivers (within the present boundaries of the Territory of Arizona).

Thereupon a commissioner was appointed by the treasurer-general who was directed to ascertain whether the grant would conflict with the rights of any other parties; also to survey and appraise the lands and offer the same for sale under the provisions of certain designated laws of the State.

This commissioner in the performance of the duties assigned him caused the land to be appraised and surveyed, and thereafter offered the same for sale at public outcry on each day for thirty consecutive days.

487 In his petition, Ro'riguez offered to pay for the land the amount at which it should be appraised, and no other person having bid at any of the public offers, the record of the proceedings was returned to the treasurer-general for final action. That officer thereupon referred the matter to the promoter fiscal of the public treasury who, upon a review of the proceedings, declared that Rodriguez ought to be admitted to a composition with the treasury of the State for said lands and recommended that three public offers, with the following language:

"This is the report of the undersigned fiscal. Your honor (the treasurer-general) will do what is proper in the premises." The treasurer-general thereupon ordered that three public offers of sale be made of said lands in the manner established by law. The "junta de almoneda," or board of sale, thereupon proceeded to make three public offers of sale on consecutive days and on the third offer declared Rodriguez to be the purchaser.

Thereafter the treasurer-general executed a formal instrument in writing in which, after referring to the proceedings theretofore had relating to the subject, he declares that in the exercise of the faculties conceded to him by the laws, decrees, and regulations and the superior existing orders in relation to lands, he does "by these presents and in the name of the free, independent, and sovereign State of Sonora, as well also of that of  
488 the august Mexican nation," confer upon Rodriguez the land in question. This instrument, together with the record of the whole proceeding, was retained in the office of the treasurer-general as a record, and a certified copy of the whole was delivered to said Rodriguez as the evidence of his title.

The "junta de almoneda" or board of sale, consisted of certain officers of the State or department of Sonora, among whom was the treasurer-general. But the powers of the board with reference to the sale of public lands were conferred and defined by the laws of the Central Mexican Government. The questions arising in the case relate to the genuineness of the alleged record of the proceedings and the legality of the action had in making the sale.

Coe & Carpenter, A. M. Stevenson, and E. M. Sanford, for plaintiffs.  
Matt. G. Reynolds, for the United States.

#### Opinion by Justice SLUSS:

The evidence in the case is sufficient to show the title papers to be genuine. It therefore becomes necessary to determine whether the grant set up was legally made by proper authority.

489 The principal contention between the parties, both upon the evidence and in argument, revolved about the question whether the State of Sonora at the time this grant was made had the power to make it; or whether, on the other hand, the Supreme Government of Mexico had the power to make it.



It seems to be unquestionable that the one or the other was vested with power to make the grant. It is not deemed necessary at this time to express a final opinion upon the question as to which, the State or the nation, was seized with the title or vested with the power to make the grant. Evidently if the State of Sonora had an existence and owned the land, or was authorized to dispose of it, the proceedings of the officers resulting in the sale were sufficient to pass the title.

It is our opinion that if it be held that the Mexican nation alone could make the grant, the proceedings of the officers shown in the evidence were sufficient to vest at least an equitable if not a full legal title in Rodriguez against the nation.

It is contended, in opposition to this view, that the State of Sonora had been abolished by the change from the federal to the centralized form of National Government, and that in place of the State there was only a department of the Supreme Government, and that the officer making the sale purported to act solely as officers of the former State, and not as officers of the then existing department. It is unquestionable that 490 the sale, that is, the essential act of passing the title, was performed by the board of sales (*junta de almoneda*). It was not made any of the individual officials who were members of the board, but by the board in its organized capacity as an official body.

The board of sales was wholly unknown to the State law of Sonora and derived no authority from any law of Sonora as a State. It was an official body expressly created by the Mexican National Government, and invested with absolute power to make sales of public lands within that department.

Now, the act of making the sale is the essential thing—the gist and meat of the transaction. And it is the actual authority with which the board was invested, and not what the individual members of the board thought about the source of that authority, which gave effect and validity to it act in making the sale.

By section 73 of the decree of April 17, 1837, these several officers composing the board, being officers of the former State and of then existing department, were taken and constituted a board of the nation, clothed with national authority to make sale of the land.

The board, so created and so authorized, did, in fact, make the sale. Now, shall it be said that the misrecital of the source of the authority of the board shall vitiate the valid act of that board? Which, in reason, is the greater, the actual fact or the mere recital, or rather misrecital, 491 of the fact? The recital of the source of the board's authority under which it was acting, or the authority under which the members thought they were acting, was unnecessary, and being unnecessary was immaterial.

The material thing to be recited were the fact of the sale and the fact as to who made it; all else was surplussage and mere opinion and did not inhere in the essence of the transaction itself. Where an officer has power to do a particular act, and does that act, he can not be permitted to destroy the validity of his own lawful act by a false recital or misrecital of a void authority, as that by which he was empowered.

In the case of *U. S. v. Clark*, 8 Peters, p. 436, Lieutenant-Governor Coppinger made a grant of land to Clark, and recited in it that he made

the grant under the authority of a certain royal order of October 29th, 1790, which order, says the court, did not authorize him to make the grant. But it appeared that under other regulations he was authorized to make the grant. The grant document was susceptible of the construction that he was acting not only under the *vid* authority, but also under the valid authority. The court held, that inasmuch as he had valid authority to make the grant and did make it, and the grant could be construed to be founded upon the valid authority, it should be upheld. The court uses the following language:

“We can not think that the recital of a fact, entirely immaterial, on which the grant does not profess to be found, can vitiate an instrument reciting other considerations on which it does profess to be founded, if the matter, as recited, be sufficient to authorize it. Without attempting to assign motives for the recital of that order, we are of the opinion that in this case the recital is quite immaterial, and does not affect the instrument. The real inquiry is, whether Governor Coppinger had power to make it.”

In the case of *Chouteau v. U. S.*, 9 Peters, p. 137, it appears from the opinion that a grant was made by the lieutenant-governor of the province. That lieutenant-governors of provinces had no authority to make grants. But in the course of the trial it appeared that the lieutenant-governor was also *ex officio* subdelegate, and that subdelegates had authority to make grants. It is apparent that he intended to make the grant as lieutenant-governor, and did not intend to make it as subdelegate; that he did not know he was subdelegate, or that such officers had authority to make grants. The grant, therefore, professed to be founded upon his authority as lieutenant-governor, which did not exist. But the court *the* held, that inasmuch as Delassus had authority to make the grant, and did in fact make it, the grant should be confirmed. As in the *Clark* case, so in this case, the real inquiry was, whether Governor Delassus had power to make the grant.

In the case before us, the grant documents not only recite the authority of the State of Sonora, but it is expressly declared therein that the sale is made and consummated by the board of sales of the nation, and that

493 the sale was made for and on behalf of the nation.

In our opinion, therefore, the grant is within the spirit and logic of the cases above recited and that they are conclusive of the question involved.

It is argued that the language of the expediente, in connection with the oral testimony of a witness in the case, to the effect that the governor of the department had issued a proclamation declaring Sonora to be a State and no longer a department, shows that these officials were participating in a rebellion against the Government of Mexico, and made this grant while in such condition of rebellion. We can not think this a reasonable construction or a fair inference from the evidence. It is true they spoke of themselves as officers of the State, and recited State laws and described Sonora as being a State, but it is plain that whatever they thought of, or denominated their jurisdiction, they recognized the fact that it belonged to and was subject to the dominion of the “august Mexican nation.”

When we consider the particular circumstances by which they were confronted it is not surprising that they proceeded as they did in making the

sale in question. The change which had taken place in the relations between the State and the nation by a change to the central system had been but of short duration. The act of the Mexican Government  
 494 creating this board of sales and empowering it to sell lands had taken effect but a short time previous. There was no act of the Supreme Government affirmatively and clearly annulling the prior legislation of the State. The officers of the State, after the change, were continued in the same capacity as officers of the nation in the department. They were situated many hundred miles across mountain ranges from the seat of government, with, to us, inconceivably slow means of communication with it. The fact that even now sincere men sincerely differ as to the legal method of making that sale affords ground for supposition that these officials may have been perplexed with uncertainty as to the legal course to pursue, and concluded, as we lawyer' say, "out of abundance of caution, to seize both horns of the dilemma and make the sale on behalf of both the nation and the State, and observe the requirements of the laws of both making it. There was nothing illegal or reprehensible in such a course and they certainly pursued it, and in doing so they can not be said to have been in rebellion or acting in opposition to the nation.

It is suggested that conceding the sale to have been made by the junta de almoneda for and on behalf of the nation, yet the sale is nevertheless void for the reason that it did not receive the approval of the Supreme Government prior to its consummation. To sustain this contention resort is  
 495 had to the provisions of the regulations of July 20, 1831, and it is claimed that article' 126, 132, and 133 of that regulation were not repealed, but continued in force and limited the power of the board of sales created by the act of April 17, 1837.

By the custom of Mexican legislation, a law was repealed by the subsequent enactment of another one covering the same subject-matter. A law providing a system of regulations of proceedings on a given subject was considered to be displaced or repealed by a subsequent one providing regulations on the same subject to accomplish the same object, although the two did not conflict at all points.

In our opinion the provisions of the law of April 17, 1837, for the sales of land, were intended to and did supersede the regulations of July 21, 1837, as to making sales of land, although on some points they are not directly repugnant to each other.

The provision' of the regulations, 1831, in substance, were, the sales of land should be made at public auction at a meeting of the then existing junta de almoneda, conducted by the commissary-general, and that the property should be knocked down to the bidder who in the opinion of the majority of the voters of the board offered the greatest advantages to the treasury. When the property had been knocked down, a minute or report of the proceedings was to be made and transmitted directly to the  
 496 Supreme Government, and the sale could not be carried into effect, that is, the proceedings remained in statu quo, until the approval of the Supreme Government was given.

It is to be borne in mind that this was in 1831, while the colonization laws were still in operation, and when no particular reason appears to have existed for the rapid conversion of the public domain into money. On April 17, 1837, the conditions had materially changed. The Govern-

ment had entered upon the policy of securing a great national loan and the issue of bonds and placing them on the European market and the issue of land script as a part of the general scheme. Under this policy it became necessary to rapidly convert the vacant lands, which were the principal source of revenue, into money to meet the accruing interest as well as the principal of this bonded debt. The slow and cumbersome methods of 1831 were not adequate to the changed condition of 1837. By the decree of April 17, 1837, a new system of administration was adopted. A supreme chief of the treasury for each department was created. A new board of sales was created in the departments. The person'al of the board was changed and elevated in character with a view, as we may suppose, to secure a degree of intelligence, trustworthiness and efficiency commensurate with greater responsibilities. This board was given confidential power to sell. It was required to keep minutes of its proceedings and a secretary of the board was provided. It was not required

497 to transmit its proceedings to the Supreme Government, but was required to transmit them to the superior chief of the treasury for the department. The superior chief was not required to transmit the record of these proceedings to the Supreme Government for its approval, but was required to transmit simply a report of the fact of the sale. If it had been the intention to require the transmission of this report for the purpose of securing the approval of the Supreme Government to the sale, how natural and how just it would have been to have said so, and not have left the purchaser to encounter the perils of a strained *ex post facto* construction, and uncertain inferences to be drawn from a critical comparison of the two laws.

The laws of April 17, 1837, provides a complete system for the sale of the public lands, materially different from the regulations of 1831.

In view of this, and the considerations which we have mentioned, we can not escape the conclusion that it was not the intention of the law to require an approval of the sale by the Supreme Government as a condition precedent to vesting an equitable title in the purchaser.

Under the principles established by our Supreme Court in many kindred cases, we think it is not our duty to take an electric light, a 498 microscope, and a tomahawk and explore the proceedings of the officials making these sales, in search of technical flaws or omissions for the purpose of slashing in pieces titles to these lands, upon the faith of which our own citizens have invested their fortunes in the attempt to render the lands fit for cultivation. On the contrary, we deem it our duty to give to these proceedings and the laws under which they were had a fair, reasonable, and liberal interpretation in favor of upholding titles issued by competent authority and upon the faith of which such large sums of money have been expended.

Lastly, it is contended that, 1853, Santa Anna, by a decree issued by him, annulled this title. To this proposition we answer: First, that no constitutional government in Christendom ever claimed the power to annul a title which had been issued upon a consideration and become vested, except for cause of fraud, and Santa Anna had no power to do by his mere *ipse dixit*; second, his decree only applied to titles which had been issued by the States, and not the titles which had been issued on behalf of

the national Government. And as we are of the opinion that the title in question here is to be regarded as of the latter class, we think it is not affected by the decree, even if Santa Anna had power to annul it.

499 EARL B. COE, PLAINTIFF,

vs.

THE UNITED STATES, DEFENDANT.

} El Paso de Los Algodones grant.

*Opinion.*

Mr. JUSTICE MURRAY delivered the dissenting opinion :

At a former trial of this cause the petition was dismissed, mainly upon the ground that, in the opinion of a majority of the court, the expediente of title offered in evidence was not genuine. A new trial was granted, and much additional evidence has been filed, and many laws and decrees of the Mexican Government have been for the first time brought to the attention of the court. There was much additional evidence taken by the petitioner to establish the genuin'ess of the title papers, and while there are many suspicious circumstances in connection with the making of the grant, and some evidence tending to show that the signature of the granting officer is a forgery, I am of the opinion that the preponderance of the evidence is in favor of the genuine'ss of the title papers.

It is claimed by the petitioner that on the 12th of April, 1838, the State of Sonora, Mexico, granted to one Senor Don Fernando Rodriguez five leagues of land at the confluence of the Gila and Colorado rivers, 500 then in the State of Sonora, now in the Territory of Arizona ; and that the title to said land was perfect at the date of signing the treaty between the United States and Mexico, known as the Gadsdon purchase, on the 30th of December, 1853.

The petitioner claims under mesue conveyances from Rodriguez to himself.

The petition is filed under the provisions of section eight (8) of the act of Congress approved March 3rd, 1891.

Counsel for the petitioner and the United States have argued this case with great ability, and have, by their untiring energy and research, greatly aided the court in the investigation of law arising on the record and the evidence filed in the cause.

It is claimed in the petition that at the date of making the grant to Rodriguez, Sonora was a free, independent, and sovereign State of the Republic of Mexico, possessing ample power under and by virtue of the decree of August 4, 1824, to sell and make valid title to the land in controversy. In fact, the whole theory of the case, as shown in the petition, is bottomed on the idea that said decree of August 4th gave the States of the Republic power to sell to Mexican citizens land within their respective demarcations, and that the colonization act of August 18, 1824, had no application to sales of lands by States to Mexican citizens.

501 This is a case of great importance, not only on account of the value of the property claimed, but also on account of the effect the decision of the question of law arising in this case may have on the rights of others who are claiming land under grants from the Mexican Government.

We are called upon to construe the laws of a foreign Government, in a foreign language, which laws consist not only of legislative enactments, but in circulars, orders and decrees of the official head of the Government issued from time to time. The difficulty of ascertaining what the laws of Mexico were at any given time is further increased by the fact that there are no reports of the decisions of the judicial tribunals of that country, and strange as it may appear the decision of all constitutional questions must be determined, if at all, by the Congress of the Republic.

In view of the difficulties suggested and the further fact that I am constrained to dissent from the opinion of the majority of my brother judges, who hold that the junta de almoneda (board of sale), who participated in the sale to Rodriguez, represented the Supreme Government, and that the action of said board in joining with the alleged State officers in making the grant was sufficient to take the title out of the Supreme Government and vest it in Rodriguez, the grantee, it is not without feelings of misgiving that I undertake to state what seems to me to be the law of the case.

I deem it unnecessary to examine at length the various changes in the form of the Mexican Government from the date of her independence to the date of this grant, or to discuss the rights and powers of the Government to control the sale of the public lands under the various changes of the Government for an empire to a republic, and from a republic to a supreme central system; nor do I think it necessary to inquire what rights or powers the provinces of the Empire had to the public lands in their respective demarcations prior to the formation of the Republic in 1824, or as to what rights to the public lands, if any, were granted to the States by the decree of August 4, 1824 (the act under which this grant is attempted to be made), for the reason that prior to the date of the grant to Rodriguez the form of the government had been changed from the federal system, adopted in 1824, to what as is known as the supreme central system. The following laws and decrees of the Government show that the functions of the various States under the federal system were entirely destroyed; in fact, the former States were extinguished, and therefore had no power to make a grant of land, or preform any other act whatever.

503 The decree of October 3rd, 1835 (Mexican Stats., vol. 3, p. 75), as follows:

"ART. 1. The governors who at present hold their offices in the States shall so continue, even when they have completed the terms previously established in their constitutions, but subject in their continuance and in the exercise of their functions to the Supreme Government of the nation.

"ART. 2. The legislatures shall discontinue at once the exercise of their legislative functions, but before dissolving and after calling together those that have adjourned, they shall appoint a departmental board, composed for the present of five individuals selected from their own body or out of it, to act as the council of the governor; in case this office is vacant, they shall propose to the Government such persons as have the qualifications which have been required heretofore; and, until the Government make an appointment, they shall preform the functions of government through the first one among the laymen named.

\* \* \* \* \*



"ART. 13. Until the attributes of the Government and departmental boards in what relates to the treasury are declared by law, said governors shall make no sales of lands or property, nor contracts not extraordinary expenses for said department, without the previous approval of the Supreme Government.

\* \* \* \* \*

"ART. 15. The Supreme General Government, through the secretary of the department of the treasury, shall act on the documents, consultations, and reports which it may receive from the governors, and shall remit the first to the general department of revenue or to the general treasury, according to the class to which they belong, for the proper uses, and in regard to the second, shall hear said offices, according to their special attributes, for the instruction and determination of said matters.

"ART. 16. The general department of revenues and the general treasury, through the minister of the treasury, shall communicate to the Supreme Government the opinions that result from the examination of the documents they receive, and shall make such explanations or rulings as are necessary, that the Supreme Government may make the proper orders and communicate them to the governors."

\* \* \* \* \*

Following this decree, the council of the Government called a special session of the Congress for the purpose, among other things, of changing the form of government and adopting a new constitution. (See Mex. Stats., vol. 3, p. 58.)

The basis of the new constitution of October 3, 1835, was agreed upon; the national independence and the national religion was established; the nation was divided into departments; the legislative authority vested in the departmental assemblies, subordinated to the general Congress of the nation. (See Mex. Stats., vol. 3, p. 89.)

The constitution of the new government was adopted on the 29th of December, 1836. (See Mex. Stats., vol. 3, p. 230.)

A law of Congress was passed on the 30th of December, 1836, to enforce the constitution of 1836, and to divide the territory into departments, the extinguished States, each constituted a department. After this time no mention is made of the States, by any department of the Government, until the year 1846, except as to past events.

In a circular from the department of the treasury, dated September 7, 1837, the former States are called "extinguished States." (See Mex. Stats., vol. 3, p. 429.)

The law of January 17, 1837 (see Mex. Stats., vol. 3, p. 260), created the national bank and created a mortgage to that bank of all the national lands in the territory of the Republic for the purpose of securing, and finally paying the national debt, therein secured.

Decree of the Supreme Government of January 30, 1837, provided for the carrying on the business of the national bank, etc.

So that it appears that prior to 1838 the Supreme Government was in possession and control of the entire territory of the Republic, and that the general laws were in force throughout the nation. Therefore, the laws and regulations of the former States in relation to the disposition of the public lands had passed away with the extinguished States.

When the form of the Mexican Government was changed from an empire to a constitutional Republic in 1824, the States were created by the central Government, and therefore possessed only such rights and powers as were conferred upon them by the constitutive act and the constitution. Sovereignty remained in the nation.

Article 3 of the organic law of 1824 is as follows :

"Sovereignty resides radically and essentially in the nation, and for that reason the right of adopt and establish through its representatives a form of Government and such other fundamental laws as appear to it most suitable for its preservation and greater prosperity, belongs exclusively to it, as well as the right of modify and change them as it believes most convenient." (See Decree, January 31, 1824, Mex. Stats., vol. 1, p. 693.)

So the nation had the power to abolish the States and change the form of government by consent of its representatives, which was done in 1835 and '36.

The proof shows that after the establishment of the new Government under the constitution of 1836, that Sonora was a department of the General Government ; that the laws of the General Government were enforced by the officers of the department of Sonora until about the first of January, 1838, when the governor and the other departmental officers concluded to disregard the constitution and laws creating the new system of government, and to go back to the federal system, as adopted in 1824 ; in other words, the governor and other officials of the department went into open rebellion against the National Government, and claimed all their rights and powers under the constitution and laws which were in force during the existence of the Government under the federal system, and the laws of the extinguished State of Sonora. Hence it is that the right to make the grant in question is claimed by virtue of the law of August 4, 1824, and the laws which had been passed by the State of Sonora.

It is quite clear that in attempting to make the grant in question the laws and regulations in force in the departments of the General Government were entirely ignored. The officers attempting to make the grant had no doubt been regular officials in the department of Sonora, but an examination of the expediente of title clearly shows that the intention of the officers was to represent the State in making the grant and not the department.

The following extracts from the various papers constituting the expediente of title conclusively show that fact :

507 "To Jose Justo Milla, proprietary auditor of the general treasury of the free, independent, and sovereign State of Sonora, encharged with said office by the laws. Whereas, article 2 of the sovereign general decree, number seventy, of the 4th of August, 1824, conceded to the States the revenues, &c."

\* \* \* \* \*

In consequence of which the honorable constituent Congress of Sonora and Sinaloa passed law number 30 on the 20th of May, 1825.

\* \* \* \* \*

Which dispositions have been embodied in sections 3, 4, 5, 6, & 7, chapter 9, of the organic law of the treasury number 26 of the 11 of July, 1834.

\* \* \* \* \*

This expediente having been concluded and no purchaser appearing at the thirty offers of sale of said lands, let the expediente be transmitted to the treasurer-general of the State that the final proceedings be taken in relation thereto.

\* \* \* \* \*

On the same day this expediente was by me delivered to senior treasurer-general of the State, in witness whereof I sign with rubric.

Arispe, April 7th, 1838.

To the promotor fiscal of the treasury.

(Signed) Milla,

Senior treasurer-general of the State.

\* \* \* \* \*

Whereupon, in view of these facts, it is most just that the Senor Don Fernando Rodriguez be admitted to composition with the treasury of this sovereign State for said vacant lands, &c.

\* \* \* \* \*

At the city of Arispe, 8 of April, 1838. The senores composing the junta de almonedas (board of sale) having met, these gentlemen being the senior treasurer-general of the State, by the ministry of the law, the comptroller, one Jose Justo Milla, the judge of the first instance of this district, Don Francisco Mendoza, and the administrator of the revenues of this city, Don Jose Carrillo, for the purpose of celebrating the first almoneda referred to in this expediente, whereupon at the sound of the bell many individuals assembled in the office of the treasurer-general, and the auctioneer, Florencio Baldizan, said in a loud, clear, voice: "There will be sold on account of the public treasury of the State five leagues of land, &c."

\* \* \* \* \*

Jose Justo Milla, propriatory auditor and treasurer-general of the state of Sonora, &c.

\* \* \* \* \*

508 Wherefore, in the exercise of the faculties conceded to me by the laws, decrees, and regulations and the superior existing orders relating to lands, by these presents and in the name of the free, independent, and sovereign State of Sonora, as well also of that of the august Mexican nation, I constitute and confer in due form of law to Senor Don Fernando Rodriguez, resident of Hermosillo, five leagues of land, &c.

\* \* \* \* \*

Jose Maria Mendoza, provisional commissary-general of the State of Sonora, &c., certify, &c.

\* \* \* \* \*

Supreme Government of the free State (of Sonora).

This supreme authority approved the title which your honor has issued on yesterday, in favor of Senor Don Fernando Rodriguez, a resident of Hermosillo, for five leagues of lands in front of the confluence of the rivers

Gila and Colorado, and the Paso of los Algodones, on the noethern frontier of this State. I say this to you in reply to your note of yesterday, reinterating the considerations of my regard, God and liberty.

Arispe, April 13, 1838.

(Signed)

LEONARDO ESCALANTE.

To the treasurer-general of the State.

\* \* \* \* \*  
The petition of Rodriguez was addressed to the officers of the State of Sonora, and every officer that had anything to do with this expediente of title claimed to be an officer of the State of Sonora.

The junta de almoneda (board of sale) claimed to be officers of the State and acted for the State. The grant is made in the name of the "free, independant, and sovereign State of Sonora as well as of the august Mexican nation." The granting officers evidently meant the "august Mexican nation," that existed under the federal system in 1824, as contradistinguished from the supreme central system that was in existence at that time. The grant is approved by Leonardo Escalante, who calimed to be governor of the State.

It is insisted, however, that the officers composing the junta de almonedas were, in point of fact, officers of the department of Sonora, and that they had power, by virtue of the laws of the general Government in force at that time, to transfer the Government's interest in the land to Rodriguez. Some of the officers participating in the sale had doubtless constituted the junta de almoneda of the department, prior to the time that they with others went into rebellion against the General Government; but, as the expediente of title shows, they, at the time of making this grant, in addition to their functions as officers of the board of sale, were acting as the chief officers of the so-called State of Sonora, and therefore active participants in the attempt to reestablish the State, in violation of the laws in existance at the time.

The junta de almoneda making the sale was composed of the Senor treasurer-general of the State; the comptroller, Jose Justo Milla, judge of the first instance of the district; Don Francisco Mendoza; and Don Jose Carrillo, all of whom claimed to be officers of the State and not of the department. They caused to be made the following announcement: "There will be sold on account of the public treasury of the State, five leagues of land, &c."

It will be seen from the foregoing recitals that the case of U. S. v. Clark, 8 Peters, p. 436, and the case of Chouteau v. U. S., 9 Peters, p. 137, have no application to the facts in this case. The principles decided in both cases are the same. In the case of Clark v. U. S., Lieutenant-Governor Coppinger made a grant to Clark and recited in it as authority the royal order of 9th of October, 1790. The court held that the royal order did not confer authority to make the grant, but that it appeared from a proper construction of the grant documents that the lieutenant-governor had authority to make the grant independent of the royal order and sustained the grant. There is no recital in the grant papers in this case showing anything like a valid authority in the officers to make the grant. There can certainly be no presumption that they were attempting to exercise their functions as officers of the department of the Supreme Govern-

ment, for it affirmatively appears on the face of the expediente that whatever they did in relation to this matter was done not as officers of the Supreme Government, but as officers of the extinguished State of Sonora.

But if I am mistaken in this position an examination of the following laws show conclusively that the junta de almoneda, as shown by the expediente in this case, failed to comply with the provisions of the  
511 law in force at the time regulating the duties and powers of the junta de almoneda in relation to the sale of the public lands belonging to the Supreme Government.

The colonization law of August 18, 1824 (White's Recop., vol. , p. ), was in force until the decree of April 4, 1837 (vol. 3, Mex. Stats., p. 352), which is as follows:

"The Government, in accord with the council, shall proceed to make effective the colonization of the lands that are or should be the property of the Republic by sales, leases (enfiteusis), or mortgages, and shall apply the proceeds (which in the first case shall not be less than \$1.25 per acres) to the payment of the national debt, already contracted or which shall hereafter be contracted, always reserving enough to meet its obligations to the soldiers who took part in the war of independance, and for the remunerations and gifts Congress may grant to Indian tribes and nations, and those who assisted in the restoration of Texas, and it shall not be compromised by the laws enacted heretofore on colonization, which enactments are all repealed in so far as they conflict with this law."

The decree of August 4, 1824 (Mex. Stats., vol. 1, p. 710), was in force in 1838, in so far as it had not been repealed or modified by subsequent legislation.

The law of January 26, 1831 (Mex. Stats., vol. 2, p. 308), is as follows:

"ART 1. A general department of revenue is established under whose control shall be all the branches of the exchequer, which are administered for the federation, except the general administration of the mail and that of the mint.

\* \* \* \* \*

"ART. 3. The general director and the auditors shall be appointed by the Government, in conformity with clause 6th of art. 110 of the constitution. The other employees shall likewise be appointed by the Government, on nomination by the director and with the approval of the corresponding auditor.

"ART. 4. The general department shall be divided into three sections, under whose charge shall be the different branches of the treasury,  
512 and the benefit fund of ministers and officers as the regulations may provide. Each auditor shall be chief of a section.

\* \* \* \* \*

"ART. 12. The commissaries-general shall continue to receive the revenues which are not under the control of the departments, but with regard to those which are they shall receive only their net products, and shall have no other control in their administration than that of making cash statements and watching over the conduct of employees, and shall inform the department of whatever abuse they observe, and shall fill the commissions or duties the department may assign them.

"ART. 13. The proceeds from the national property shall be collected by commissioners under the immediate direction of the general department.

\* \* \* \* \*

"ART. 22. This decree shall not go into effect until these that regulate the general treasury and the commissaries are promulgated."

Circular of 7th of July, 1831, department of the treasury, page 341, is as follows :

"ART. 1. In accordance with the provisions of article 4, of the law of January 26, of the current year, which establishes the general department, this latter is divided into three sections, under whose charge shall be the different branches of the treasury, which are administered for the federation and the benefit fund of ministers and officers, in the following terms :

"The first section, of which is chief the first auditor.

"Tobacco as stated in its place.

"Powder in whatever relates to its management.

"Sealed paper for the consumption of the district and territories and the tribunals and officers of the federation.

"National property, in which is included, under article 9 of the law of August 4, 1824, those of the inquisition and temporalities and all other country or town lands belonging to the federation.

"Second section, of which is chief the second auditor.

"All branches whose administration is entrusted to the marine and frontier custom-houses, those of the federal district and territories, and weighing duties.

"Third section, of which is chief the third auditor.

"Lotteries.

"Salt deposits.

"Benefit fund of ministers and officers, indifferent and extraordinary.

513 "ART. 2. The branches of the treasury referred to which are administered for the federation being under the management of the director general, everything pertaining to the management and economy thereof are within his attributes, as chief of said revenues and of the employees who administer them.

\* \* \* \* \*

"ART. 10. The general department shall take an exact account of the number, location, value, condition, and present method of administration of all the property and lands of the nation, in which are included those of the inquisition and temporalities and all others that belong to the public exchequer, in accordance with said law of August 4, 1824. It shall see to the thorough collection of the products, as provided in that particular in the law of January 26th last, and in other laws on the matter now in force, procuring the best arrangement, increase of returns, and best possible economy in the expenses; and it shall do whatever it considers most beneficial in regard to the sale, lease, or other means of administration that may be advisable, in whole or in part, of the property in question."



The regulation of July 20, 1831 (Mex. Stats., vol. 2, p. 351), in so far as it relates to the revenues of the Government and the duties of the revenue officers, is as follows :

"ART. 73. The commissariats-general, within their respective demarcations shall collect all the net products of revenue under the care of the general directory, and they shall be the proper custodians of funds that stand unappropriated for any purpose. It is their duty likewise to collect all other revenues from all sources else ; for which purpose authority is given them to incur whatever expenses may be necessary ; said collections they shall distribute into the several funds of the union according to their uses. They shall also supervise the balancing of the cash books in the Government offices and general depots, whenever that balancing shall have to be done. They shall be the proper supervisors and guardians of the treasury depots ; and it is their duty to watch that all employees in the same do their duty faithfully and well. In the matter of bridges, canals, and common roads they shall exercise such authority as is given, or that shall be in future given to them by law. Finally, it devolves upon them to do whatever else is entrusted to them by the Government relative to the finances of the nation ; likewise as to matters entrusted to them by the general directory relative to its collecting offices, and they shall perform all other duties that may be assigned to them by law.

\* \* \* \* \*

514 "ART. 84. The commissaries-general shall keep every year a journal that has been paged and signed, with their rubrics, by them and by the auditors. Their duty shall be to keep in said journal a record of the day on which supreme orders were received by them from the Government, or from the general treasury, or from the general directory of the revenues ; they shall also keep a record therein of all instructions issued to subalterns and of the date of the issuing as well as of the date of the answers they shall get to the same ; in affairs of the suspension of expenditures or the making of collections, etc., they shall be careful to explicitly demand the said answers. The date of the receipt of the said answer shall be written on the left margin, sufficient space for which is to be left on each page of said book. Orders that refer to the collection and distribution of funds after being recorded in said journal shall be delivered in their originals for their execution to the treasury auditors, who by virtue thereof shall sign all proper papers, and the commissaries will see that said orders are complied with. The decrees and laws bearing on these particulars will also be delivered therewith to the auditors.

\* \* \* \* \*

"ART. 126. All sales, purchases, and contracts done for the benefit of the public finance department, whatever their object may be, shall be entered into by the commissaries-general at auction-sales meetings (junta de almoneda). But in order to have such meetings called it is necessary that they should have previously received the proper order therefor given either by the Supreme Government and directly communicated to them, or indirectly through the treasurer-general, or from the directory of the revenues, whenever the order has reference to matters of its own supervision.

"ART. 127. Said meetings shall be held in the apartments of the commissariats, be it suited to the purpose, or at the public place more immediately adjoining said offices, and the commissary or subcommissary who presides at them shall be a regular member thereof, as well as the oldest auditor of the treasury or his deputy, and also the public procurator, wherever such may be; each one of these officers shall take their seats in the order in which they are named.

"ART. 128. Besides these regular members there shall also be special members, as the nature of the sale, purchase, or contract may be, for whenever in the federal district officers of said revenue for the general directory are the subject for consideration, then the auditor in charge of said office or revenue shall attend the meeting in the character of a special member; if said offices or revenues belong to any other department, then the  
515 chief clerk of the section of accounts of finances shall attend. In army matters an officer appointed by the proper inspector shall attend, and in matters concerning shops and buildings under the contract of the artillery department their chief officer shall attend. In matters of hospitals, one of the first adjutants of the medical board; and in matters of fortifications and officers of the board of engineers. Lastly, upon matters having reference to any other thing than these mentioned, the employee better acquainted with such matters, and who shall be appointed by the commissary-general, shall attend, he (the commissary-general) taking care to give notice to both the regular and special members of the day and hour for the auction to take place, which will be ordinarily at ten o'clock in the morning. When the military officers or the auditors of the general directory and the chief clerk of the section of accounts of finance shall be present in the character of special members they shall take their seats after the commissary-general.

"ART. 129. In the commissariats and subcommissariats outside of the federal district, whenever matters of revenue come up before the meeting, the head officer thereof shall be present as a special member, if he happens to have his residence there. So as to persons spoken of in the foregoing article, or, in their absence, their clerks, when matters of their charge are to be transacted. In contracts relative to the army, the commissary or subcommissary shall give notice to the proper officers, that they may appoint an officer, and in his absence or inability a substitute to attend the meeting.

"ART. 130. If there happens to be a notary at the place he shall be in attendance of said auction-sale meeting without failing, and with him, or if there should be no notary, then with two attending witnesses. All matters transacted at the meeting shall be certified to.

"ART. 131. But in order to hold such meetings it is necessary that the sales or purchases to be made must be announced to the public at least eight days before, by means of placards to be pasted at prominent and conspicuous places, having their contents published also in newspapers having the largest circulation, if there be any such papers in the place, the commissaries being careful that in said notices both the more essential circumstances and the necessary instructions pertaining to the matter be inserted.

"ART. 132. Once that the meeting shall be opened, and the corresponding proclamations made by the public crier, bids legally made shall be admitted until the closing day of the sale, when it shall be declared  
516 in favor of the highest bidder, by a majority of the meeting. This act, together with whatever else took place at the auction sale, will be placed on record in a book kept by the commissaries or subcommissaries for that purpose. All the members signing therein, together with the attending witnesses, or with a notary, who (the notary) shall moreover write the other deeds connected with the transaction. In case there be no notary in the place, then a clerk brought for the purpose by the commissary-general shall reduce to record the act and decision of the meeting.

"ART. 133. When the term prescribed by law expires the commissaries or subcommissaries shall send the expediente, together with an accompanying report, to the Supreme Government, without whose approval the sale, purchase, or contract can not be carried into effect.

"ART. 134. When it appears that any one of the members of the auction meeting, by himself or through another person, bought or sold at the auction sale for his own use, then the sale shall be null and he shall be punished by the infliction of such penalties as the law imposes on like transgressors."

The law of September 20th, 1836 (Mex. Stats., vol. 3, p. 194), is as follows:

"The Government is authorized to make all the provision it may deem necessary for the regulation of the general system of the treasury of the Republic, until the organic law on the matter is promulgated, but it shall not be understood for that reason that it has power to levy taxes or to increase those already established."

Decree of April 17, 1837 (Mex. Stats., vol. 3, p. 363), is as follows:

"ART. 1. Until the general Congress establishes the revenues which are to form the national exchequer in all the Republic of Mexico the revenues, taxes, and property of which the Supreme Government is in possession shall continue, and the revenues, taxes, and property which the department established or acquired under the federal system and which existed at the time of the publication of the decree of Oct. 3rd, 1835.

"ART. 2. The revenues, taxes, and property which by the law of 17th of last January were assigned to the national bank are excepted from the provisions of the last article until it fulfills its object.

\* \* \* \* \*

517 "ART. 4. Superior chiefs of the treasury shall be located in each department, with powers designated in this decree. All the employees of the treasury in their respective districts, in the instances and manner which shall be designated, shall be subordinated to them.

"ART. 5. The administration and management of the public funds are divided into offices for collection and offices for distribution. The first shall collect the duties that form the exchequer, and shall be charged with the safekeeping, increase, and collection of whatever said duties produce; the second shall be entrusted with the inversion of the national funds in the different purposes of a public administration; the former shall be denominated administrations of revenues and the latter departmental treasuries.

"ART. 6. The administration of revenue shall be divided into principal and subordinate.

\* \* \* \* \*

"ART. 73. All the purchases and sales that are offered on account of the treasury and exceed five hundred dollars shall be made necessarily (precisamente) by the board of sales, which, in the capitals of each department, shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the attorney-general of the treasury, and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book which shall be kept for the purpose and shall be signed by all the members of the board, and a copy thereof shall be transmitted to the superior chief of the treasury for such purposes as may be necessary and to enable him to make a report to the Supreme Government.

"ART. 74. The superior chiefs shall hold meetings of the board of the treasury at least twice a month and when they consider it necessary, according to the difficulty and gravity of the business. These boards shall be composed of said chief, the departmental treasurer, the attorney-general of the treasury, the principal collector of the revenues, and the auditor of the treasury, who shall act as secretary thereof.

\* \* \* \* \*

"ART. 76. The minutes of the board shall be spread on the proper book, which shall be signed by all the members thereof, and an authenticated copy transmitted to the superior chief of the treasury, to enable him to make a report to the Supreme Government when the case requires it."

\* \* \* \* \*

Article 92 of the law of April 17, 1837, is as follows:

518 "The powers that by various laws are given to the commissaries general and subcommissaries shall be exercised in future by the superior chiefs of hacienda and their subalterns in so far as they do not conflict with this decree, for in that respect all existing laws stand repealed." (Arriallaga, Recop., p. 330.)

An examination of the existing laws, not in conflict with the decree of April 17, 1837, gives us a complete system of collecting the revenues of the Government; the duties of the commissaries general and subcommissaries are clearly defined. The commissary-general is to keep the proper books and to cause the auditors to keep proper books, and orders received from the Supreme Government, or any department thereof, are to be noted and a memoranda made of the date received, &c.; and the purchase, sale, or contract made on account of the treasury, whatever be their purpose, are to be made by the commissaries general of the board of sale; but before convening them it was necessary to receive proper orders either from the Supreme Government, communicated directly or through the general treasury, or from the general department when relating to the branches subject to it.

The time and place of the meeting of the board of sale is provided for, the officers allowed to vote specified. Then follows art. 131, 132 and 133 of said regulation of July 20, 1831.

The nation having contracted a debt and being unable to meet it  
519 from the revenues collected under existing laws, the law of April 4, 1837, was passed, which repealed, to a great extent, the coloni-

zation law of August 18, 1824, and provided that the lands belonging to the Republic should be sold for not less than \$1.25 per acre and the proceeds applied to the payment of the national debt. This law also authorized the creation of a mortgage on the property belonging to the Government to raise money to pay off the national debt. Art. 73 of said law created officers in the various departments called superior chiefs of the treasury, and provided for a board of sale at the capitals, and also provided that they should consist of the superior chief of the treasury, first alcalde, attorney-general, and auditor of the treasury, and further provided that all sales offered on account of the treasury that exceeded \$500 should be made by the board of sale. Art. 92, as we have seen, made it the duty of the chief of the treasury and his subordinates to discharge all duties which had devolved on the commissaries general and subcommissaries by former laws.

It is a well-recognized rule of construction that all statutes on the same subject must be construed together. When this rule is applied to the various statutes and decrees in relation to the sale of public lands which were in force on the 12th of April, 1838, it is quite clear that the junta de almoneda had no power whatever to sell and convey the public lands of the Government, so as to vest the purchaser with the title, unless  
520 the sale was first approved by the General Government.

The law required proposed sales to be advertised by posters at least eight days and by publication in a newspaper; the minimum price at which the land could be sold was \$1.25 per acre; all sales made on account of the treasury, whatever was their purpose, must be made by the board of sale, but before making it it was necessary to receive the proper orders from the Supreme Government, and without the approval of the Supreme Government no sale or contract had any effect.

The junta de almoneda in the sale to Rodriguez did not pretend to comply with any of these requirements; on the contrary, it appears on the face of the title papers that their intention was to disregard the law of the Supreme Government in every respect. The land was not sold for \$1.25 per acre, as provided in the law of April 4th, 1837, nor advertised for eight days, as required; but, on the contrary, twenty-five thousand acres of land was advertised for three days and sold for the sum of \$400, and if the money was paid at all it was paid into the treasury of the extinguished State of Sonora.

All the laws and regulations passed by the National Government in relation to the sale of the public lands in the departments during the existence of the States applied to the departments created after the States were extinguished.

521 It is insisted by the counsel that Sonora, if not a State at the time of making this grant, was, at least, a State de facto, and that as such all grants by it must be recognized by the General Government. If this was true the court should not confirm the grant, unless it should affirmatively appear that it had been approved by the Supreme Government, as the laws in force at that time declared all grants by the States void unless they were approved by the Supreme Government.

The decree of November 25, 1853 (Mex. Stats., vol. 6, p. 766), is as follows :

"Department of the interior. His excellency, the President of the Republic, has been pleased to direct to me the following decree :

"Antonio Lopez de Santa Anna, etc. : Know ye, that by virtue of the powers the nation has seen fit to confer on me, I have decided to decree the following :

"ART. 1. It is declared that the public lands, as the exclusive property of the nation, could never have been alienated under any title by virtue of decrees, orders, or dispositions of the legislatures, governors, or special authorities of the States or territories of the Republic.

"2. Consequently, it is declared that the sales, cessions, or any other kind of alienations of said public lands which have been made without the express order or sanction of the General Government, in the manner prescribed by the laws, are null and of no value or effect.

"3. The functionaries, authorities, and employees, to whom corresponds the execution of this decree, shall proceed as soon as they receive it to recover and to take possession in the same of the nation, of lands comprehended in the provisions of art. 1, and which may be found in the possession of corporations or private individuals, whatever be their prerogatives or category.

"4. No claims of any kind, whatsoever, or petitions whose purpose is to obtain indemnifications from the public treasury for the damages which the holders or unlawful owners may allege, by virtue of the provisions of the proceeding articles, shall be admitted by the judicial, civil, or administrative authorities, the latter reserving only their right against those persons from whom they had the lands they are compelled to return."

This decree was in full force and effect at the date of signing the treaty between Mexico and the United States, on the 30th of December, 1853.

The petitioner's rights in this case depend on the rights which he had under the laws of Mexico in force at the date of the transfer of the property to the United States under the treaty. No subsequent act or decree of the Mexican Government could, in any way, affect the rights of the United States or the rights of the petitioner.

It is insisted by counsel for petitioner that Santa Anna was a usurper and that his decrees were declared void by the Mexican Government after he was deposed. This could not affect the rights of the parties which attached under the laws in force at the date of signing the treaty. Santa Anna was the acknowledged head of the Mexican Republic at the date of the decree, and was so recognized by the Mexican Government and the United States as well. He was the President of the Republic at the date of the purchase of the property by the United States from the Mexican Government, and had power to make the decree and to enforce it throughout the Republic. It is, therefore, just as binding on this Government and the petitioner as though it had been an act of Congress of the Mexican Republic. It fixed the property rights of the citizens of Mexico and the rights of the United States at the date of signing the treaty, which was ratified and proclaimed by this Government June 30, 1854.



It is a well-recognized principle of international law, as laid down by Mr. Wheaton, in section 31 of Wheaton's International Law, that "where a foreign government and their subjects treat with the actual head of the state, or the government de facto recognized by the acquiescence of the nation for the acquisition of any portion of the public domain or of private confiscated property, the acts of such government must, on principle, be considered valid by the lawful sovereign on his restoration, although they were the acts of him who is considered by the restored sovereign as an usurper."

It is further insisted by counsel that the correspondence between some of the officers of the State of Sonora and the General Government, as shown by certain letters attached to the expediente of title, would authorize the court to presume that the sale in this case had been ratified and approved by the General Government.

One of the letters referred to is written by Jose Maria Mendoza, who was at the time provisional commissary-general of the State, and it is addressed to the treasurer-general of the State. From this letter it appears that Rodriguez in 1847 presented his title papers to Mendoza, to the end that the same might be transmitted to the President of the Republic, but for what purpose does not appear. This letter is dated January 5th, 1847.

524 There are other letters dated in 1838, 1840, and 1841, which I deem unnecessary to notice, further than to say, from the language used in some of them, it might be inferred that the land in controversy was included with other lands mortgaged to the national bank. The last letter in relation to the grant to Rodriguez is dated on the 15th of January, 1858, and is signed by Jose Maria Mendoza and Florencia Trejo. This seems to have been written at the request of Rodriguez and contains the information that the original expediente of title had been found in the archives pertaining to the treasury department, and had been transmitted to the Supreme Government of the State.

Taking all the correspondence together, it negatives any presumption that the grant was approved by the Supreme Government; but if it did not, the expediente shows that the officers who executed it were at the time actively engaged in rebellion against the lawfully constituted authorities of the Government, and therefore no presumptions will be indulged in by the court which would deprive the lawful Government of any rights of property which they assumed to dispose of.

I agree with a majority of the court, that "it is not the duty of the court to take an election light, a microscope, and a tomahawk, and explore the proceedings of officials making these grants in search of technical flaws or omissions for purpose of slashing to pieces titles to these lands, upon the faith of which our own citizens have invested their fortunes in the attempt to render the land fit for cultivation." But I do not think it requires an electric light, nor a microscope to see that the objections made to the confirmation of this grant are not technical. Individual cases of hardship may occur in the administration of the law, but that does not justify the court in confirming a void grant.

I am satisfied that the petitioner bought the land in good faith and has expended in improvements on it a large amount of money, but that does

not change the law of the case; he claims under a grant to Rodriguez from the State of Sonora, and stands on no higher ground than the grantee would if he was before the court asking a confirmation of this title.

The petitioner has neither legal nor equitable title and his petition should be dismissed.

In the foregoing opinion of Associate Justice Murray I concur.

THOMAS C. FULLER,

*Associate Justice, Court of Private Land Claims.*

I certify that the foregoing laws and decrees from the statutes of Mexico are correctly translated.

EUSEBIO CHACON,

*Official Translator, Court of Private Land Claims.*

(Indorsed on cover:) Case No. 15430. Term No. 591. The United States, appellants, vs. Earl B. Coe. Court of private land claims. Filed Oct. 21, 1893.